162 U.S. 91

TRANSCRIPT OF RECORD.

162-91

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 559.

THE CENTRAL PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED MARCH 15, 1895.

(15,831.)

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1 & 2 In the Supreme Court of the State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,	No. 15600 in Supreme Court.
vs.	
CENTRAL PACIFIC RAILROAD COMPANY, Defendant and Appellant.	No. 28424 in Court Below.

Transcript on Appeal.

Appeal from the superior court of the State of California in and for the city and county of San Francisco, department No. 4. Honorable J. C. B. Hebbard, judge.

H. S. Brown, Foshay Walker, and J. E. Foulds, attorneys for appellant.

Langhorne & Miller, attorneys for respondent.

Filed this 5th day of January, 1894.

L. H. BROWN, *Clerk*,
By GEO. A. McCALVY,
Deputy Clerk.

3 In the Supreme Court of the State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,	No. — in Supreme Court.
vs.	
CENTRAL PACIFIC RAILROAD COMPANY, Defendant and Appellant.	No. 28424 in Court Below.

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Appeal from the superior court of the State of California in and for the city and county of San Francisco, department No. 4, Honorable J. C. B. Hebbard, judge.

H. S. Brown, Foshay Walker, and J. E. Foulds, attorneys for appellant.

Langhorne & Miller, attorneys for respondent.

4 *Amended Complaint.*

On the 2d day of January, 1891, plaintiff filed herein its amended complaint as follows:

(Title of Court and Cause.)

Plaintiff, as of course, files this amended complaint, and for a first cause of action avers:

I. That the defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of

California engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails, and rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen millions of dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: Locomotives (including tenders), 152; sleepers, cars, 14 (one-fourth owned by Pullman Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand, and section cars, 271; all other kind of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50; franchise, roadway, road-bed, and rails within said State, as follows:

Beginning at the end of Long wharf, in Alameda county, and running easterly to the mole, thence easterly through Seventh street, Oakland, to terminus of local line of the Central Pacific Railroad Company; also, beginning at west end of mole, West Oakland, running thence easterly to west line of Oakland point; thence continuing easterly to First street, Oakland; thence along said street to west line of San Antonio estuary; thence across said estuary, in a general easterly direction, to its intersection with the easterly end of said local line; thence easterly to Melrose; thence continuing on same course through San Leandro, Haywards and Decoto, to Niles; thence easterly and northeasterly to town of Pleasanton; thence through Livermore pass and Midway station to the west line of San Joaquin county; again, beginning at Niles, and running in a southerly direction through Washington corners to the northerly line of Santa Clara county; again, beginning at the intersection of Harrison and Seventh streets, Oakland; thence running southerly along Harrison to First street; thence across First street and the railroad bridge to south line of San Antonio estuary; thence southerly to Railroad avenue, in town of Alameda, near Mastick station; again, running the full length of Railroad avenue, through town of Alameda, to Melrose; also, small spur track, running from Alameda spur to main track known as the Fruit Vale switch; the right of way, except on public streets and Long bridge, being 100 feet wide, making a distance of 83.52 miles in Alameda county.

Beginning at a point where the south line of Butte county intersects a point near the northeast corner of section 30, township 17 north, range 3 east, Mount Diablo base and meridian, and thence running northwesterly through Gridley, Biggs and Durham to depot

in town of Chico; thence westerly to town of Nord; thence northwesterly through Anita and Cana to a point near the southwest corner of section 31, township 24 north, range 1 west, on the north line of Butte county, Mount Diablo base and meridian; right of way 100 feet wide, being forty-five miles in Butte county.

Beginning at a point where the northwest line of Fresno county intersects section 13, township 9 south, range 15 east; thence southeasterly through Minturn, Berenda, Borden, Fresno and Fowler's to a point in the center of the northeast quarter of northeast quarter of northeast quarter of section 35, township 16 south, range
7 22 east; right of way 100 feet wide, townships and ranges of Mount Diablo base and meridian, being 60.13 miles in Fresno county.

Beginning at a point where the southeast line of Stanislaus county intersects the east line of the southwest quarter of section 23, township 5 south, range 10 east, running thence southeasterly in a direct line to Cressy; thence southeasterly by south, through Atwater to Merced; thence southeasterly to a point on northwest line of Fresno county, where said line intersects the southwest corner of section 13, township 9 south, range 15 east; townships and ranges of Mount Diablo base and meridian; right of way 100 feet wide, being a distance of 36.75 miles in Merced county.

Beginning at the intersection of the south line of Nevada county with the center of south line of southeast quarter of section 21, township 17 north, range 12 east, and running thence northeasterly to southeast corner of southwest quarter of southwest quarter of section 19, township 17 north, range 13 east; again, beginning at southeast corner of southwest quarter of section 20, township 17 north, range 14 east; thence easterly to southeast corner of said section 20; thence to southeast corner of southwest quarter of section 24, township 17 north, range 14 east; again, beginning at southeast corner of southwest quarter of southeast quarter of section 17, township 17 north, range 16 east; thence northeasterly to intersection of south line of Sierra county; townships and ranges of Mount Diablo base and meridian; right of way 200 feet wide, being a distance of 30.25 miles in Nevada county.

8 Beginning at a point on dividing line between Sacramento and Placer counties, in southwest quarter of northwest quarter of section 15, township 10 north, range 6 east, Mount Diablo base and meridian; thence running in a general northeasterly direction through Roseville, Rocklin, Pino or Loomis, Penryn, Newcastle, Auburn, Colfax, Dutch Flat to south line of Nevada county, where it intersects the north line of northeast quarter of northeast quarter of section 28, township 17 north, range 12 east; again, beginning at the southeast corner of the southwest quarter of section 19, township 17 north, range 13 east; thence running easterly to southeast corner of southwest quarter of section 20, township 17 north, range 14 east; again, beginning at southeast corner of southwest quarter of section 24, township 17 north, range 14 east, and thence running southeasterly to the center of northeast quarter of northwest quarter of section 30, township 17 north, range 16 east; thence northeasterly

to northeast corner of northwest quarter of section 20, township 17 north, range 16 east; thence to intersection of Nevada county line with southeast corner of southwest quarter of southeast quarter of section 17, township 17 north, range 16 east, being 92.25 miles of the main line; again, beginning at the depot at Roseville, near the east line of section 2, township 10 north, range 6 east, and thence running northerly through the towns of Lincoln and Sheridan to a point where the center of Bear river railroad bridge intersects the south line of Yuba county, a distance of 20.50 miles; the right of way being on the main line 200 feet wide, and on the last-described division 100 feet wide; townships and ranges being of Mount Diablo base and meridian; making a total distance of 112.75 miles in Placer county.

Beginning at a point on the bridge crossing Dry creek, at a point about one mile south of Galt, the south line of Sacramento county, and thence running northwesterly through Galt, Elk Grove, and Florin to the intersection of the Sacramento and Placerville railroad at Brighton station; thence continuing same course to railroad bridge across the American river; thence crossing the bridge and running northeasterly to a point on south line of Placer county, in southwest quarter of northwest quarter of section 15, township 10 north, range 6 east, Mount Diablo base and meridian; also, a spur track running from foot of K street, on Front street, Sacramento city, to main depot in city; thence easterly to corner of B and Seventh streets, in said city; thence easterly along B street and levee to intersection of main line at a point known as Tivoli Gardens; right of way, except on public thoroughfares, 100 feet wide, being a distance of 41 miles in Sacramento county.

Beginning at south line of block 408, North Potrero survey, running thence northerly through blocks 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 47, 45, 44 and 43 to Channel street; thence to King street; also, beginning on southerly line of South Beach and water lot block 20; thence northerly through blocks 20 and 15 to Fourth street; thence across the street northeasterly through 100-vara lots 165 and 159 to King street, connecting with the first-described track; thence northerly, on King street, to South Beach and water lot block 9 to ferry slip of freight-boats; also, spur track from said block 9 to Pacific Mail Steamship Company's wharf, with right of way, other than on public streets, 60 feet wide, being a distance of 2.49 miles in the city and county of San Francisco.

Beginning at a point on west line of San Joaquin county, 200 yards east of Midway station; thence running easterly to Bantas; thence northeasterly to San Joaquin river; thence to Lathrop; thence due north through the city of Stockton, and Lodi, to Calaveras river; thence northwesterly to a point on the bridge across Dry creek, one mile south of town of Galt, which point is the north line of San Joaquin county; again, beginning at a point near the depot in Lathrop, at junction with main line of the Central Pacific railroad, running southeasterly through Morano and Ripon to center of railroad bridge across the Stanislaus river, in township 2 south,

range 8 east, Mt. Diablo base and meridian, being the south line of said county, with right of way, except in public thoroughfares, 100 feet wide, being a distance of 56.75 miles in San Joaquin county.

Beginning at Southern Pacific Railroad depot, in the city of San José, Santa Clara county, and thence running northerly through Milpitas to a point on the southerly line of Alameda county,
11 with the right of way, except in the city of San José, 100 feet wide, making a distance of 8.50 miles in Santa Clara county.

Beginning at a point in the center of Cottonwood creek, in the southwest quarter section 10, township 29 north, range 4 west, running thence northeastly to a point near the northeast corner of section 1, said township and range; thence northwesterly diagonally through township 30 north, range 4 west, through the town of Anderson to a point in section 31, township 31 north, range 4 west; thence north to north line of town of Redding; thence running northwesterly through township 32 north, range 5 east, west to south line section 34, township 33 north, range 5 west; thence northerly about four miles; thence northeasterly to southwest corner section 36, township 34 north, range 5 west; thence north to south line of section 12, township 35 north, range 5 west; thence northwesterly to Delta; thence westerly to north line of northwest quarter of northwest quarter of section 34; thence northerly through the west half of section 27 to the north line of northwest quarter of northwest quarter of the section; thence across the southwest quarter of southwest quarter of section 22 to a point near the center of east half of southeast quarter section 21; thence northeasterly through section 22; thence across section 15; thence across the southwest quarter section 10; thence through sections 11 and 2 to a point on north line of the northeast quarter of section 2, all in township 36 north, range 5 west; thence across section 35, and
12 northerly through sections 36 and 25 to the north line of northeast quarter of section 25, and thence across the southeast quarter of section 24, to the east line of southeast quarter of section 24, in township 37 north, range 5 west; thence northeasterly through sections 19, 18, 17, 8, the southeast quarter of section 5 to west line of northwest quarter of southwest quarter section 4; thence on section line between sections 4 and 5 to northeast corner of southeast quarter of northeast quarter of section 5; thence to the northeast corner of northwest quarter of northwest quarter of section 4, in township 37 north, range 4 west; thence northerly through sections 33, 28, 27, 22 to north half of southeast quarter of section 15; thence easterly to northwest quarter of southeast quarter of section 14; thence northerly and westerly to north line of northeast quarter of northwest quarter of section 14; thence northerly across section 11; thence northerly and easterly across the southeast quarter of section 2 to a point on south line of southeast quarter of northeast quarter section 2; thence north to the north line of Shasta county, at a point near the center of north line of southeast quarter of northeast quarter of section 2, all in township 38 north, range 4 west, townships and ranges Mount Diablo base and meridian; right of way 100 feet wide, being 82.38 miles in Shasta county.

Beginning at a point on south line of Sierra county, about one-half mile west of southeast corner of said county, running
13 thence northeasterly to a point on the east line of Sierra county, with right of way 200 feet wide, being a distance of 2.15 miles in Sierra county.

Beginning at a point on the south line of Siskiyou county, near the center of north line of southeast quarter of northeast quarter of section 2, township 38 north, range 4 west, and thence running northerly through the northeast quarter of section 2 aforesaid, and across the southeast quarter of southeast quarter of section 35; thence northeasterly across section 36, northerly across sections 25, 24 and 13, northwesterly across sections 12, 1 and 2, in township 39 north, range 4 west; thence northwesterly across the southwest quarter of southwest quarter of section 35, and running westerly in the south half of section 34 to a point on the northwest quarter of southwest quarter of section 34, and thence returning easterly on the south half of section 34, crossing the southwest quarter of section 35, in township 40 north, range 4 west, and entering the northwest quarter of section 1, and continuing southerly to and returning northerly in the southeast quarter of section 12; thence running northerly in sections 12 and 1, all in township 39 north, range 4 west, and entering section 35 aforesaid; thence running northwesterly across sections 5, 34, 27, 28, 21, 16, 9, 8, 5 and 6, to a point on the west line of southwest quarter of northwest quarter of section 6, of township 40 north, range 4 west; thence across the northeast quarter of section 1, township 40 north, range 5 west, into section 36, and across the southwest quarter of section
14 36, and thence northerly across sections 35, 26, 25, 24, 13, 12, 1, and thence westerly across sections 2, 3 and 4, township 41 north, range 5 west; thence northerly across section 33, and northwesterly across sections 28, 20 and 19, township 42 north, range 5 west; thence across the northeast corner of the northeast quarter of section 24; thence northwesterly across section 13, westerly along the north half of section 14, and thence northerly across sections 11, 2 and 3, township 42 north, range 6 west; thence northerly across sections 34, 27, 22, 15, 10 and 3, township 43 north, range 6 west; thence northerly across sections 34, 27, 22, 15, 10, 3 and 4, township 44 north, range 6 west; thence northeasterly across the southeast quarter of southeast quarter of section 33; thence northerly in the west half of section 34, and the west half of section 27, to the depot at the town of Montague, in the northeast quarter of northwest quarter of section 27, township 45 north, range 6 west, townships and ranges of Mount Diablo base and meridian; right of way 100 feet wide, being 55.54 miles in Siskiyou county.

Beginning at a point in center of railroad bridge across the Stanislaus river, in township 2 south, range 8 east, running thence southeasterly, in a direct line, through Salida, Modesto and Turlock, to a point where the northwest line of Merced county intersects the east line of the southwest quarter of section 23, township 5 south, range 10 east; townships and ranges being of Mount Diablo base

and meridian; right of way 100 feet wide, being a distance of 22.63 miles in Stanislaus county.

Beginning at intersection of center of railroad bridge across the Feather river with center of channel of river, the east line of Sutter county, running thence directly to a point near the northeast corner of section 30, township 17 north, range 3 east, Mount Diablo base and meridian, which point is on north line of Sutter county; right of way 100 feet wide, being 10 miles in Sutter county.

Beginning at a point on south line of Tehama county, intersected by the south line of southwest quarter of southwest quarter of section 31, township 24 north, range 1 west; thence running north and by west through Vina, Tehama and Red Bluff to a point at the southeast corner of northeast quarter of section 16, township 28 north, range 4 west; thence north and easterly to the center of channel of Cottonwood creek, in southwest quarter of section 10, township 29 north, range 4 west, being the north line of Tehama county; right of way 100 feet wide, townships and ranges Mount Diablo base and meridian, being a distance of 40.54 miles in Tehama county.

Beginning at a point where the northerly line of Tulare intersects the center of the northeast quarter of northeast quarter of northeast quarter of section 35, township 16 south, range 22 east, Mount Diablo base and meridian, and thence running southeasterly to the depot in town of Goshen, on south part of section 19, township 18 south, range 24 east, Mount Diablo base and meridian, with a right of way 100 feet wide, being a distance of 13.58 miles in Tulare county.

Beginning at a point where the railroad bridge across Bear river intersects the center of the channel of said river; thence running northwesterly through the town of Wheatland, and across the Yuba river to depot in city of Marysville; thence northwesterly through Marysville to the center of railroad bridge across Feather river, which point is on the northerly line of Yuba county; right of way, except on public thoroughfares, 100 feet wide, being 15.87 miles in Yuba county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's railway was located in proportion to the number of miles of defendant's railway laid in such counties; and the amounts of said total assessment so apportioned by said board to said counties respectively and the number of miles of defendant's railway laid in said counties respectively were as follows, to wit:

To county of Alameda, $2,089,451. Railway laid therein, 83.52 miles.

To county of Butte, $1,125,782. Railway laid therein, 45 miles.

To county of Fresno, $1,504,295. Railway laid therein, 60.13 miles.

To county of Merced, $919,388. Railway laid therein, 36.75 miles.

To county of Nevada, $756,776. Railway laid therein, 30.25 miles.

To county of Placer, $2,820,709. Railway laid therein, 112.75 miles.

To county of Sacramento, $1,025,712. Railway laid therein, 41 miles.

To city and county of San Francisco, $61,543. Railway laid therein, 2.46 miles.

To county of San Joaquin, $1,419,736. Railway laid therein, 56.75 miles.

To county of Santa Clara, $212,648. Railway laid therein, 8.50 miles.

To county of Shasta, $2,053,426. Railway laid therein, 82.08 miles.

To county of Sierra, $53,787. Railway laid therein, 2.15 miles.

To county of Siskiyou, $1,389,465. Railway laid therein, 55.54 miles.

To county of Stanislaus, $566,143. Railway laid therein, 22.63 miles.

To county of Sutter, $250,174. Railway laid therein, 10 miles.

To county of Tehama, $1,014,204. Railway laid therein, 40.54 miles.

To county of Tulare, $339,736. Railway laid therein, 13.58 miles.

To county of Yuba, $397,025. Railway laid therein, 15.87 miles.

18 V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to each of the county auditors of said counties a statement showing the length of the main track of defendant's railway within the counties of said auditors respectively, with a description of the whole of defendant's railway track within the counties of said auditors respectively, including the right of way sufficient for identification, the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to the counties of said auditors respectively; and said descriptions in said statements of defendant's railway track, including its right of way in said counties respectively were the same respectively as those hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of each of said counties did enter said statement so transmitted to him upon the assessment-roll of his county, and did enter upon said assessment-roll of his county the said amount of said assessment apportioned by said State board of equalization to his county in the column of the assessment-roll of his county which showed the total value of all property of his county for taxation; and thereafter, and on the first Monday

19 in October, 1887, the board of supervisors of each of said counties did make and cause to be entered in the proper

record books respectively an order stating and declaring the length of main track of defendant's railway assessed by said State board of equalization within their respective counties; also the assessed value per mile of such railway, the number of miles of track, and the assessed value of such railway lying in their respective counties, and as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of each of said counties did levy the State tax of said State of California according to the rate theretofore fixed for such State tax for the fiscal year ending June 30, 1888, by said State board of equalization, upon the taxable property in its county, including the property of defendant assessed and apportioned to its county as aforesaid, and the taxes so levied in all of said counties for the purposes of State taxation upon said property of defendant assessed and apportioned to said counties as aforesaid was the sum of $109,440.00.

VIII. That upon the seventeenth day of September, 1887, said State board of equalization did fix the rate of State taxation for the fiscal year ending June 30, 1888, at the rate of $0.608 on each one hundred dollars.

IX. That defendant has never at any time paid said State tax, amounting to said sum of $109,440.00, nor any part thereof.

20 That said State tax became and was delinquent on the last Monday in December, 1887, at six o'clock p. m., and upon and at the time of and by reason of such delinquency five per cent. of said State tax, to wit, the sum of $5,472.00, was, by the controller of said State, added to said State tax, and no part of said $5,472.00 so added for delinquency has ever been paid by defendant.

X. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a duplicate record of assessment of railways, and a duplicate record of apportionment of railway assessments for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the said counties.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county, and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after

21 the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at the State capital of said State, and in two daily newspapers of general circulation published in the city and county of San Francisco in said State, a notice that he had received from

said State board of equalization said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable and would become delinquent on the last Monday in December, 1887, at 6 o'clock p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof.

That a reasonable compensation for legal services by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for a second cause of action avers:

I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State
22 and county taxation for the fiscal year ending June 30, 1888. did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen millions dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: locomotives (including tenders), 152; sleepers, cars, 14 (4 belonging to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage express, and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed, and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed, and rails, so far as the same pertained to and were within the county of Alameda, in said State, were as follows, to wit:

Beginning at the end of Long wharf, in Alameda county,
23 and running easterly to the mole, thence easterly through Seventh street, Oakland, to terminus of local line of the Central Pacific Railroad Company; also, beginning at west end of mole, West Oakland, running thence easterly to west line of Oakland point; thence continuing easterly to First street, Oakland; thence along said street to west line of San Antonio estuary; thence across said estuary, in a general easterly direction, to its intersection with the easterly end of said local line; thence easterly to Melrose;

thence continuing on same course through San Leandro, Haywards, and Decoto, to Niles; thence easterly and northeasterly to town of Pleasanton; thence through Livermore pass and Midway station to the west line of San Joaquin county; again, beginning at Niles, and running in a southerly direction through Washington corners to the northerly line of Santa Clara county; again, beginning at the intersection of Harrison and Seventh streets, Oakland; thence running southerly along Harrison to First street; thence across First street and the railroad bridge to south line of San Antonio estuary; thence southerly to Railroad-avenue, in town of Alameda, near Mastick station; again, running the full length of Railroad avenue, through town of Alameda, to Melrose; also, small spur track, running from Alameda spur to main track, known as the Fruit Vale switch; the right of way, except on public streets and Long bridge, being 100 feet wide, making a distance of 83.52 miles in Alameda county.

24 IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Alameda, was the sum of $2,089,451; and the number of miles of defendant's railway laid in said county of Alameda, and so assessed, were 83.52 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Alameda a statement showing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to said county of Alameda, and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

25 VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon said assessment-roll of said county the said amount of said assessment apportioned by the State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value

per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $12,762.07.

VIII. That defendant has never at any time paid said tax,
26 amounting to said sum of $12,762.07, nor any part thereof; that said tax became and was delinquent on the last Monday in December, 1887, at six o'clock p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $638.10 was, by the controller of said State, added to said tax, and no part of said $638.10 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the county of Alameda.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to
27 each county, and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at the State capital of said State, and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization said duplicate record of assessments of railways, and duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at six o'clock p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof.

That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution

of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for a third cause of action avers:

I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

28 II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails, and rolling stock of defendant's railroad, then situated and being within said State at the sum of eighteen millions dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: locomotives (including tenders), 152; sleepers, cars, 14 (¼ belonging to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express, and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand, and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed, and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, road-

29 way, road-bed, and rails, so far as the same pertained to and were within the county of Butte, in said State, were as follows, to wit:

Beginning at a point where the south line of Butte county intersects a point near the northeast corner of section 30, township 17 north, range 3 east, Mount Diablo base and meridian, and thence running northwesterly through Gridley, Biggs, and Durham to depot in town of Chico; thence westerly to town of Nord; thence northwesterly through Anita and Cana to a point near the southwest corner of section 31, township 24 north, range 1 west, on the north line of Butte county, Mount Diablo base and meridian; right of way 100 feet wide, being 45 miles in Butte county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Butte was the sum of $1,125,782; and the number of miles of defendant's railway laid in said county of Butte, and so assessed, were 45 miles.

per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $12,762.07.

VIII. That defendant has never at any time paid said tax,
26 amounting to said sum of $12,762.07, nor any part thereof; that said tax became and was delinquent on the last Monday in December, 1887, at six o'clock p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $638.10 was, by the controller of said State, added to said tax, and no part of said $638.10 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the county of Alameda.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to
27 each county, and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at the State capital of said State, and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization said duplicate record of assessments of railways, and duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at six o'clock p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof.

That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution

of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for a third cause of action avers:

I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

28 II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails, and rolling stock of defendant's railroad, then situated and being within said State at the sum of eighteen millions dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: locomotives (including tenders), 152; sleepers, cars, 14 (¼ belonging to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express, and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand, and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed, and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, road-

29 way, road-bed, and rails, so far as the same pertained to and were within the county of Butte, in said State, were as follows, to wit:

Beginning at a point where the south line of Butte county intersects a point near the northeast corner of section 30, township 17 north, range 3 east, Mount Diablo base and meridian, and thence running northwesterly through Gridley, Biggs, and Durham to depot in town of Chico; thence westerly to town of Nord; thence northwesterly through Anita and Cana to a point near the southwest corner of section 31, township 24 north, range 1 west, on the north line of Butte county, Mount Diablo base and meridian; right of way 100 feet wide, being 45 miles in Butte county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Butte was the sum of $1,125,782; and the number of miles of defendant's railway laid in said county of Butte, and so assessed, were 45 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Butte, a statement showing the length of the
30 main track of defendant's railway within said county with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to said county of Butte, and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book, an order stating and declaring the said length of main track of defendant's railway assessed by said board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value
31 of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $11,123.73.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $11,122.73, nor any part thereof; that said tax became and was delinquent on the last Monday in December, 1887, at six o'clock p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $556.18 was by the controller of said State added to said tax, and no part of said $556.18 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which
32 said duplicate records included the said assessment of de-

fendant's said property, and the said apportionment of the assessment of defendant's property to the county of Butte.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent, to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation, published at the State capital of said State, and in two daily newspapers of general circulation, published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at 6 o'clock p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof.

33 That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for a fourth cause of action avers:

I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the 13th day of August, A. D. 1887, the State board of equalization of said State, for the purpose of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails, and rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as fol-

34 lows, to wit: Rolling stock, to wit: Locomotives, (including tenders), 152; sleepers, cars, 14, (¼ belonging to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express, and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand, and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway,

road-bed, and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed, and rails, so far as the same pertained to and were within the county of Fresno, in said State, were as follows, to wit:

Beginning at a point where the northwest line of Fresno county intersects section 13, township 9 south, range 15 east; thence southeasterly through Minturn, Berenda, Borden, Fresno, and Fowler's to a point in the center of the northeast quarter of northeast quarter of northeast quarter of section 35, township 16 south, range 22 east; right of way 100 feet wide, townships and ranges of Mount Diablo base and meridian, being 60.13 miles in Fresno county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which
35 defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Fresno was the sum of $1,504,295; and the number of miles of defendant's railway laid in said county of Fresno, and so assessed, were 60.13 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Fresno a statement showing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to said county of Fresno, and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said
36 county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $15,725.11.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $15,725.11, nor any part thereof; that said tax became and was delinquent on the last Monday in December, 1887, at six o'clock p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit,
37 the sum of $786.25 was, by the controller of said State, added to said tax, and no part of said $786.25 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the county of Fresno.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid, and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation pub-
38 lished at the State capital of said State, and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at 6 o'clock p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof.

That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for a fifth cause of action avers:

I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails,
39 and rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: Locomotives (including tenders), 152; sleepers, cars, 14 (¼ belonging to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express, and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand, and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed, and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed, and rails, so far as the the same pertained to and were within the county of Merced, in said State, were as follows, to wit: Beginning at a point where the southeast line of Stanislaus county intersects the east line of the southwest quarter of section 23, township 5 south, range 10 east, running thence southeasterly in a direct line to Cressy; thence southeasterly by south, through
40 Atwater to Merced, thence southeasterly to a point on northwest line of Fresno county, where said line intersects the southwest corner of section 13, township 9 south, range 15 east; townships and ranges of Mount Diablo base and meridian; right of way 100 feet wide, being a distance of 36.75 miles in Merced county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails, and rolling stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Merced was the sum of $919,388; and the number of miles of defendant's railway laid in said county of Merced, and so assessed, were 36.75 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor

of said county of Merced a statement showing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise,
roadway, road-bed, rails, and rolling stock of defendant's
41 railway in said State, and the amount apportioned to said
county of Merced, and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes
upon the taxable property of said county, including the
42 property of defendant, assessed and apportioned to said
county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $10,959.10.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $10,959.10 nor any part thereof; that said tax became and was delinquent on the last Monday in December, 1887, at 6 o'clock, p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $547.95 was, by the controller of said State, added to said tax, and no part of said $547.95 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the county of Merced.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid,
43 and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at the State capital of said State, and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at 6 o'clock p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof.

That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action is a sum equal to 10 per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for a sixth cause of action avers:

44 I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails, and rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: locomotives (including tenders), 152; sleepers, cars, 14 (¼ belonging to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express, and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand, and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of
45 railway in said State, 719.50 miles; franchise, roadway, road-bed, and rails within said State the same as hereinbefore de-

scribed in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed, and rails, so far as the same pertained to and were within the county of Nevada, in said State, were as follows, to wit: Beginning at the intersection of the south line of Nevada county with the center of south line of southeast quarter of section 21, township 17 north, range 12 east, and running thence northeasterly to southeast corner of southwest quarter of southwest quarter of section 19, township 17 north, range 13 east; again, beginning at southeast corner of southwest quarter of section 20, township 17 north, range 14 east, thence easterly to southeast corner of said section 20, thence to southeast corner of southwest quarter of section 24, township 17 north, range 14 east; again, beginning at southeast corner of southwest quarter of southeast quarter of section 17, township 17 north, range 16 east, thence northeasterly to intersection of south line of Sierra county; townships and ranges of Mount Diablo base and meridian; right of way 200 feet wide, being a distance of 30.20 miles in Nevada county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's
46 railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Nevada was the sum of $756,776; and the number of miles of defendant's railway laid in said county of Nevada, and so assessed, were 30.25 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Nevada a statement showing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails, and rolling stock of defendant's railway in said State, and the amount apportioned to said county of Nevada, and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said
47 county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring

the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $12,047.87.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $12,047.87, nor any part thereof; that said tax became and was delinquent on the last Monday in December, 1887, at six o'clock, p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit,
48 the sum of $602.39 was, by the controller of said State, added to said tax, and no part of said $602.39 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the county of Nevada.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid, and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county, and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish
49 for two weeks in one daily newspaper of general circulation published at the State capital of said State, and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at 6 o'clock p. m., and that unless paid to the State treasurer at the capital prior thereto, five per cent. would be added to the amount thereof.

That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for a seventh cause of action avers:

I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did
50 assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails, and rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: locomotives (including tenders), 152; sleepers, cars, 14 (¼ belonging to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express, and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand, and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed, and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed, and rails, so far as the same pertained to and were within the county of Placer, in said State, were as follows, to wit: Beginning at a point on dividing line between Sacramento and Placer counties, in southwest quarter of northwest quarter of section
15, township 10 north, range 6 east, Mount Diablo base
51 and meridian, thence running in a general northeasterly direction through Roseville, Rocklin, Pino or Loomis, Penryn, Newcastle, Auburn, Colfax, Dutch Flat to south line of Nevada county, where it intersects the north line of northeast quarter of northeast quarter of section 28, township 17 north, range 12 east; again, beginning at the southeast corner of the southwest quarter of section 19, township 17 north, range 13 east, thence running easterly to southeast corner of southwest quarter of section 20, township 17 north, range 14 east; again, beginning at southeast corner of southwest quarter of section 24, township 17 north, range 14 east, and thence running southeasterly to the center of northeast quarter of northwest quarter of section 30, township 17 north, range 16 east; thence northeasterly to northeast corner of

northwest quarter of section 20, township 17 north, range 16 east; thence to intersection of Nevada county line with southeast corner of southwest quarter of southeast quarter of section 17, township 17 north, range 16 east, being 92.25 miles of the main line; again, beginning at the depot at Roseville, near the east line of section 2, township 10 north, range 6 east, and thence running northerly through the towns of Lincoln and Sheridan to a point where the center of Bear River railroad bridge intersects the south line of Yuba county, a distance of 20.50 miles; the right of way being on the main line 200 feet wide, and on the last-described division 100 feet wide; townships and ranges being of Mount Diablo base
52 and meridian; making a total distance of 112.75 miles in Placer county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails, and rolling stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Placer was the sum of $2,820,709; and the number of miles of defendant's railway laid in said county of Placer, and so assessed, were 112.75 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Placer a statement showing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails, and rolling stock of defendant's railway in said State, and the amount apportioned to said county of Placer and said description in said statement of defendant's railway track, in-
53 cluding its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of de-
54 fendant, assessed and apportioned to said county as aforesaid, was the sum of $35,033.21.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $35,033.21, nor any part thereof; that said tax became and was delinquent on the last Monday in December, 1887, at six o'clock, p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $1,751.66 was, by the controller of said State, added to said tax, and no part of said $1,751.66 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the county of Placer.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid, and enter in separate money columns in the said duplicate record
55 of apportionment of railway assessments the respective sums in dollars and cents, rejecting fractions of a cent, to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks, in one daily newspaper of general circulation published at the State capital of said State, and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization said duplicate record of assessments of railways and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at 6 o'clock p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof.

That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, in a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for an eighth cause of action avers:

56 I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of said State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: locomotives (including tenders), 152; sleepers, cars, 14 (¼ belonging to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express, and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand, and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed, and rails

57 within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed, and rails, so far as the same pertained to and were within the county of Sacramento, in said State, were as follows, to wit:

Beginning at a point on the bridge crossing Dry creek, at a point about one mile south of Galt, the south line of Sacramento county, and thence running northwesterly through Galt, Elk Grove, and Florin to the intersection of the Sacramento and Placerville railroad at Brighton station; thence continuing same course to railroad bridge across the American river; thence crossing the bridge and running northeasterly to a point on south line of Placer county, in southwest quarter of northwest quarter of section 15, township 10 north, range 6 east, Mount Diablo base and meridian; also, a spur track running from foot of K street, on Front street, Sacramento city, to main depot in city; thence easterly to corner of B and Seventh streets, in said city; thence easterly along B street and levee to intersection of main line at a point known as Tivoli Gardens; right of way, except on public thoroughfares, 100 feet wide, being a distance of 41 miles in Sacramento county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and roll-

58 ing stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number

of miles of defendant's railway in such counties; and the amount of said total assessment so apportioned by said board to the county of Sacramento was the sum of $1,025,712; and the number of miles of defendant's railway laid in said county of Sacramento, and so assessed, were 41 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Sacramento a statement showing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to said county of Sacramento, and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did
59 enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $6,428.71.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $6,428.71, nor any part thereof; that said tax became and was delinquent on the last Monday in De-
60 cember, 1887, at six o'clock, p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $321.43, was, by the controller of said State, added to said tax, and no part of said $321.43 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the con-

Plaintiff further complains of defendant, and for an eighth cause of action avers:

56 I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of said State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: locomotives (including tenders), 152; sleepers, cars, 14 (¼ belonging to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express, and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand, and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed, and rails

57 within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed, and rails, so far as the same pertained to and were within the county of Sacramento, in said State, were as follows, to wit:

Beginning at a point on the bridge crossing Dry creek, at a point about one mile south of Galt, the south line of Sacramento county, and thence running northwesterly through Galt, Elk Grove, and Florin to the intersection of the Sacramento and Placerville railroad at Brighton station; thence continuing same course to railroad bridge across the American river; thence crossing the bridge and running northeasterly to a point on south line of Placer county, in southwest quarter of northwest quarter of section 15, township 10 north, range 6 east, Mount Diablo base and meridian; also, a spur track running from foot of K street, on Front street, Sacramento city, to main depot in city; thence easterly to corner of B and Seventh streets, in said city; thence easterly along B street and levee to intersection of main line at a point known as Tivoli Gardens; right of way, except on public thoroughfares, 100 feet wide, being a distance of 41 miles in Sacramento county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and roll-

58 ing stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number

of miles of defendant's railway in such counties; and the amount of said total assessment so apportioned by said board to the county of Sacramento was the sum of $1,025,712; and the number of miles of defendant's railway laid in said county of Sacramento, and so assessed, were 41 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Sacramento a statement showing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to said county of Sacramento, and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did
59 enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $6,428.71.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $6,428.71, nor any part thereof; that said tax became and was delinquent on the last Monday in De-
60 cember, 1887, at six o'clock, p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $321.43, was, by the controller of said State, added to said tax, and no part of said $321.43 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the con-

troller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the county of Sacramento.

Before the fourth Monday in October, 1887, said controller did compute at the rates of taxation, fixed and levied as aforesaid, and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county, and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did pub-
61 lish for two weeks in one daily newspaper of general circulation published at the State capital of said State, and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at 6 o'clock, p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof. That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for a ninth cause of action avers:

I. The defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more
62 than one county in said State, the franchise, roadway, roadbed, rails and rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling-stock, to wit: locomotives (including tenders), 152;

sleepers, cars, 14 (¼ belonging to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express, and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed, and rails, so far as the same pertained to and were within the city and county of San Francisco, in said State, were as follows, to wit: Beginning at south line of block 408, North Portrero survey, running thence northerly through blocks 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 47, 45, 44, and 43
63 to Channel street, thence to King street; also, beginning on southerly line of South beach and water lot block 20, thence northerly through blocks 20 and 15 to Fourth street; thence across the street northeasterly through 100-vara lots 165 and 159 to King street, connecting with the first-described track, thence northerly, on King street, to South beach and water lot block 9 to ferry slip of freight boats; also, spur track from said block 9 to Pacific Mail Steamship Company's wharf, with right of way, other than on public streets, 60 feet wide, being a distance of 2.46 miles in the city and county of San Francisco.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the city and county of San Francisco was the sum of $61,543; and the number of miles of defendant's railway laid in said city and county of San Francisco, and so assessed, were 2.46 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said city and county of San Francisco a statement show-
64 ing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to said city and county of San Francisco, and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon

said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equal-
65 ization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $706.39.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $706.39, nor any part thereof; that said tax became and was delinquent on the last Monday in December, 1887, at six o'clock, p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $35.31, was, by the controller of said State, added to said tax, and no part of said $35.31 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments,"
66 for the fiscal pear ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the city and county of San Francisco.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid, and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county, and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at the State capital of said State, and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of

equalization said duplicate record of assessments of railways and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at 6 o'clock p. m., and that unless paid to the State treasurer at the capitol prior
67 thereto, five per cent. would be added to the amount thereof.

That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause and action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for a tenth cause of action avers:

I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as fol-
68 lows, to wit: Rolling stock, to wit: locomotives (including tenders), 152; sleepers, cars, 14 (¼ belong to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express, and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand, and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed and rails, so far as the same pertained to and were within the county of San Joaquin, in said State, were as follows, to wit:

Beginning at a point on west line of San Joaquin county, 200 yards east of Midway station, thence running easterly to Bantas; thence northeasterly to San Joaquin river; thence to Lathrop; thence due north through the city of Stockton, and Lodi, to Calaveras river; thence northwesterly to a point on the bridge across Dry creek, one mile south of town of Galt, which point is the north line of San Joaquin county; again, beginning at a point near the depot in Lathrop, at junction with main line of the Central Pacific railroad, running southeasterly through Morano and Ripon to center of railroad bridge across the Stanislaus river, in township 2

south, range 8 east, Mount Diablo base and meridian, being the south line of said county, with right of way, except in public
69 thoroughfares, 100 feet wide, being a distance of 56.75 miles in San Joaquin county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of San Joaquin was the sum of $1,419,736; and the number of miles of defendant's railway laid in said county of San Joaquin, and so assessed, were 56.75 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of San Joaquin a statement showing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to said county of San Joaquin, and said description in said statement of defendant's railway
70 track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1880, upon said property of de-
71 fendant, assessed and apportioned to said county as aforesaid, was the sum of $8,306.78.

VIII. That defendant has never at any time paid said tax

amounting to said sum of $8,306.78, nor any part thereof; that said tax became and was delinquent on the last Monday in December, 1887, at six o'clock, p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $415.33, was, by the controller of said State, added to said tax, and no part of said $415.33 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the county of San Joaquin.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid, and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in
72 dollars and cents, rejecting fractions of a cent to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county, and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at the State capital of said State, and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at six o'clock p. m. and that unless paid to the State treasurer at the capital prior thereto, five per cent would be added to the amount thereof. That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for an eleventh cause of action avers:

I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State
73 of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and

rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: locomotives (including tenders), 152; sleepers, cars, 14 (¼ belong to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and
74 made a part hereof; and the said description of said franchise, roadway, road-bed and rails, so far as the same pertained to and were within the county of Santa Clara, in said State, were as follows, to wit:

Beginning at Southern Pacific railroad depot, in the city of San Jose, Santa Clara county, and thence running northerly through Milpitas to a point on the southerly line of Alameda county, with the right of way, except in the city of San Jose, 100 feet wide, making a distance of 8.50 miles in Santa Clara county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Santa Clara was the sum of $212,648; and the number of miles of defendant's railway laid in said county of Santa Clara, and so assessed, were 8.50 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Santa Clara a statement showing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within
75 said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to said county of Santa Clara, and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon

said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October,
76 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant assessed and apportioned to said county as aforesaid, was the sum of $1,160.56.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $1,160 56, nor any part thereof; that said tax became and was delinquent on the last Monday in December, 1887, at six o'clock p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $58.02, was, by the controller of said State, added to said tax, and no part of said $58.02 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defend-
77 ant's property to the county of Santa Clara.

Before the fourth Monday in October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid, and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent, to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county, and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at the State capital of said State, and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of

equalization said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at six o'clock, p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof.

That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

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Plaintiff further complains of defendant, and for a twelfth cause of action avers:

I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: locomotives (including tenders), 152; sleepers, cars, 14 (¼ belong to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed and rails, so far as the same pertained to and were within the county of Shasta, in said State, were as follows, to wit:

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Beginning at a point in the center of Cottonwood creek, in the southwest quarter section 10, township 29 north, range 4 west, running thence northeasterly to a point near the northeast corner of section 1, said township and range; thence northwesterly diagonally through township 30 north, range 4 west, through the town of Anderson, to a point in section 31, township 31 north, range 4 west; thence north to north line of town of Redding; thence running northwesterly through township 32 north, range 5 east, west to south line section 34, township 33 north, range 5 west; thence northerly about four miles; thence northeasterly to southwest cor-

ner section 36, township 34 north, range 5 west; thence north to south line section 12, township 35 north, range 5 west; thence northwesterly to Delta; thence westerly to north line of northwest quarter of northwest quarter of section 34; thence northerly
80 through the west half of section 27, to the north line of northwest quarter of northwest quarter of the section; thence across the southwest quarter of southwest quarter of section 22, to a point near the center of east half of southeast quarter section 21; thence northeasterly through section 22; thence across section 15; thence across the southwest quarter section 10; thence through sections 11 and 2, to a point on north line of the northeast quarter of section 2, all in township 36 north, range 5 west; thence across section 35, and northerly through sections 36 and 25, to the north line of northeast quarter of section 25, and thence across the southeast quarter of section 24, to the east line of southeast quarter of section 24, in township 37 north, range 5 west; thence northeasterly through sections 19, 18, 17, 8, the southeast quarter of section 5, to west line of northwest quarter of southwest quarter section 4; thence on section line between sections 4 and 5, to northeast corner of southeast quarter of northeast quarter of section 5; thence to the northeast corner of northwest quarter of northwest quarter of section 4, in township 37 north, range 4 west; thence northerly through sections 33, 28, 27, 22, to north half of southeast quarter of section 15; thence easterly to northwest quarter of southeast quarter of section 14; thence northerly and westerly to north line of northeast quarter of northwest quarter of section 14; thence northerly across section 11; thence northerly and easterly across the southeast quarter of section 2, to a point on south line of
81 southeast quarter of northeast quarter section 2; thence north to the north line of Shasta county, at a point near the center of north line of southeast quarter of northeast quarter of section 2, all in township 38 north, range 4 west, townships and ranges Mount Diablo base and meridian; right of way 100 feet wide, being 82.08 miles in Shasta county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Shasta was the sum of $2,053,426; and the number of miles of defendant's railway laid in said county of Shasta, and so assessed, were 82.08 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Shasta a statement showing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per

mile of the said assessed value of the whole franchise, road-
82 way, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to said county of Shasta, and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as afore-
83 said, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $33,717.25.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $33,717.25, nor any part thereof; that said tax became and was delinquent on the last Monday in December, 1887, at six o'clock p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $1,685.86 was, by the controller of said State, added to said tax, and no part of said $1,685.86 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the county of Shasta.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid,
84 and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid

by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county, and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at the State capital of said State, and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at six o'clock, p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof. That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for a thirteenth cause of action avers:

85 I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: locomotives (including tenders), 152; sleepers, cars, 14 (¼ belong to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed and rails

86 within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed and rails, so far as the same pertained to and were within the county of Sierra, in said State, were as follows, to wit:

Beginning at a point on south line of Sierra county, about one-

half mile west of southeast corner of said county, running thence northeasterly to a point on the east line of Sierra county, with right of way 200 feet wide, being a distance of 2.15 miles in Sierra county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Sierra was the sum of $53,787, and the number of miles of defendant's railway laid in said county of Sierra, and so assessed, were 2.15 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Sierra a statement showing the length of the main track of defendant's railway within said county, with a de-
87 scription of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to said county of Sierra, and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

88 VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $1,125.22.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $1,125.22, nor any part thereof; that said

tax became and was delinquent on the last Monday in December, 1887, at six o'clock, p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $56.26 was, by the controller of said State, added to said tax, and no part of said $56.26 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalizaiion did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's
89 said property, and the said apportionment of the assessment of defendant's property to the county of Sierra.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent, to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county, and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at the State capital of said State and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization, said duplicate record of assessments of railways and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at six o'clock p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof. That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of
90 this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for a fourteenth cause of action avers:

I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and roll-

ing stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by the defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: locomotives, (including tenders), 152; sleepers, cars, (4 belong to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express
91 and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand and section cars, 271; all other kinds of cars, 47; snow plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed and rails, so far as the same pertained to and were within the county of Siskiyou, in said State, were as follows, to wit:

Beginning at a point on the south line of Siskiyou county, near the center of north line of southeast quarter of northeast quarter of section 2, township 38 north, range 4 west, and thence running northerly through the northeast quarter of section 2 aforesaid, and across the southeast quarter of southeast quarter section 35; thence northeasterly across section 36, northerly across sections 25, 24, and 13, northwesterly across sections 12, 1 and 2, in township 39 north, range 4 west; thence northwesterly across the southwest quarter of southwest quarter of section 35, and running westerly in the south half of section 34 to a point on the northwest quarter of southwest quarter of section 34, and thence returning easterly on the south half of section 34, crossing the southwest quarter of section 35 in township 40 north, range 4 west, and entering the northwest quarter of section 1, and continuing southerly to and returning northerly in the southeast quarter of section 12; thence running
92 northerly in sections 12 and 1, all in township 39 north, range 4 west, and entering section 35 aforesaid; thence running northwesterly across sections 5, 34, 27, 28, 21, 16, 9, 8, 5 and 6, to a point on the west line of southwest quarter of northwest quarter of section 6, of township 40 north, range 4 west; thence across the northeast quarter of section 1, township 40 north, range 5 west, into section 36, and across the southwest quarter of section 36, and thence northerly across sections 35, 26, 25, 24, 13, 12, 1, and thence westerly across sections 2, 3 and 4, township 41 north, range 5 west; thence northerly across section 33, and northwesterly across sections 28, 20 and 19, township 42 north, range 5 west; thence across the northeast corner of the northeast quarter of section 24; thence northwesterly across section 13, westerly along the north half of section 14, and thence northerly across sections 11, 2 and 3, township 42 north, range 6 west; thence northerly across sections 34, 27, 22, 15, 10 and 3, township 43 north, range 6 west; thence northerly

across sections 34, 27, 22, 15, 10, 3 and 4, township 44 north, range 6 west; thence northeasterly across the southeast quarter of southeast quarter of section 33; thence northerly in the west half of section 34, and the west half of section 27, to the depot at the town of Montague, in the northeast quarter of northwest quarter of section 27, township 45 north, range 6 west, townships and ranges of Mt. Diablo base and meridian; right of way 100 feet wide, being 55.54 miles in Siskiyou county.

93 IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Siskiyou was the sum of $1,389,465; and the number of miles of defendant's railway laid in said county of Siskiyou, and so assessed were 55.54 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Siskiyou a statement showing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to said county of Siskiyou and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in Octo-
94 ber, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the

fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $13,088.76.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $13,088.76, nor any part thereof;
95 that said tax became and was delinquent on the last Monday in December, 1887, at six o'clock p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $654.43 was, by the controller of said State, added to said tax, and no part of said $654.43 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the county of Siskiyou.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid by the defendant as the State tax upon the total amount of said assessment and as the county tax upon the apportionment of said assessment to each county, and city and county, of the property assessed to
96 defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at the State capital of said State and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization, said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at six o'clock p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof.

That a reasonable compensation for legal services by Langhorne & Miller, attorneys for plaintiff in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for a fifteenth cause of action avers:

I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the
97 State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: locomotives (including tenders), 152; sleepers, cars, 14 (¼ belong to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed and rails, so far as the same pertained to and were within the county of Stanislaus, in said State, were as follows, to wit:
98 Beginning at a point in center of railroad bridge across the Stanislaus river, in township 2 south, range 8 east, running thence southeasterly, in a direct line, through Salida, Modesto and Turlock, to a point where the northwest line of Merced county intersects the east line of the southwest quarter of section 23, township 5 south, range 10 east; townships and ranges being of Mount Diablo base and meridian; right of way 100 feet wide, being a distance of 22.63 miles in Stanislaus county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Stanislaus was the sum of $566,143; and the number of miles of defendant's railway laid in said county of Stanislaus, and so assessed were 22.63 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Stanislaus a statement showing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said
99 county, including the right of way, sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's

railway in said State, and the amount apportioned to said county of Stanislaus and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October,
100 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $3,310.24.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $3,310.24, nor any part thereof; that said tax became and was delinquent on the last Monday in December, 1887, at six o'clock, p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $165.51 was, by the controller of said State, added to said tax, and no part of said $165.51 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the county of Stanislaus.

101 Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid, and enter in separate money colums in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county, and city and county, of the property assessed to

defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at the State capital of said State and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization, said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at six o'clock p. m., and unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof.

That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

102 Plaintiff further complains of defendant, and for a sixteenth cause of action avers:

I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: locomotives (including tenders), 152; sleepers, cars, 14 (¼ belong to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand and section cars, 271;

103 all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed and rails, so far as the same pertained to and were within the county of Sutter, in said State, were as follows, to wit:

Beginning at intersection of center of railroad bridge across the Feather river with center of channel of river, the east line of Sutter county, running thence directly to a point near the northeast corner

of section 30, township 17 north, range 3 east, Mount Diablo base and meridian, which point is on north line of Sutter county; right of way 100 feet wide, being ten miles in Sutter county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Sutter was the sum of $250,174; and the number of miles of defendant's railway laid in said county of Sutter, and so assessed, were 10 miles.

104 V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Sutter a statement showing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to said county of Sutter, and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of

105 main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $1,481.03.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $1,481.03, nor any part thereof; that said

tax became and was delinquent on the last Monday in December, 1887, at six o'clock, p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $74.05 was, by the controller of said State, added to said tax, and no part of said $74.05 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of rail-
106 ways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the county of Sutter.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid by the defendant as the State tax upon the total amount of said assessment and as the county tax upon the apportionment of said assessment to each county, and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at the State capitol of said State and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization, said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would
107 become delinquent on the last Monday in December, 1887, at six o'clock, p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof.

That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for a seventeenth cause of action avers:

I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and

rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified state-
108 ment thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: locomotives (including tenders), 152; sleepers, cars, 14 (¼ belong to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed and rails, so far as the same pertained to and were within the county of Tehama, in said State, were as follows, to wit:

Beginning at a point on south line of Tehama county, intersected by the south line of southwest quarter of southwest quarter of section 31, township 24 north, range 1 west; thence running north and by west through Vina, Tehama, and Red Bluff, to a point at the southeast corner of northeast quarter of section 16, township 28 north, range 4 west; thence north and easterly to the center of channel of Cottonwood creek, in the southwest quarter of section 10, township 29 north, range 4 west, being the north line of
109 Tehama county; right of way 100 feet wide, township and ranges Mt. Diablo base and meridian, being a distance of 40.54 miles in Tehama county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Tehama was the sum of $1,014,204; and the number of miles of defendant's railway laid in said county of Tehama, and so assessed, were 40.54 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Tehama a statement showing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to said county of Tehama,

and said description in said statement of defendant's railway
110 track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of de-
111 fendant, assessed and apportioned to said county as aforesaid, was the sum of $10,540.49.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $10,540.49, nor any part thereof; that said tax became and was delinquent on the last Monday in December, 1887, at six o'clock, p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $527.02, was, by the controller of said State, added to said tax, and no part of said $527.02 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the county of Tehama.

Before the fourth Monday of October 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid by the de-
112 fendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county, and city and county, of the prop-

erty assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at the State capitol of said State and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization, said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at six o'clock, p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof.

That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for an eighteenth cause of action avers:

I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State
113 of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as follows, to wit: Rolling stock, to wit: locomotives (including tenders), 152; sleepers, cars, 14 (¼ belong to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and
114 made a part hereof; and the said description of said franchise, roadway, road-bed and rails, so far as the same pertained to and were within the county of Tulare, in said State, *were* as follows, to wit:

Beginning at a point where the northerly line of Tulare intersects the center of the northeast quarter of northeast quarter of northeast quarter of section 35, township 16 south, range 22 east,

Mt. Diablo base and meridian, and thence running southeasterly to the depot in town of Goshen, on south part of section 19, township 18 south, range 24 east, Mt. Diablo base and meridian, with a right of way 100 feet wide, being a distance of 13.58 miles in Tulare county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Tulare was the sum of $339,736; and the number of miles of defendant's railway laid in said county of Tulare, and so assessed, were 13.58 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Tulare a statement showing the
115 length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to said county of Tulare, and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per
116 mile of such railway in said county, the number of miles of track and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county, did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $3,370.18.

VIII. That defendant has never at any time paid said tax,

amounting to said sum of $3,370.18, nor any part thereof; that said tax became and was delinquent on the last Monday in December, 1887, at six o'clock, p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum of $168.50 was, by the controller of said State, added to said tax, and no part of said $168.50 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assess-
117 ments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the county of Tulare.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid, and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county, and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at the State capital of said State, and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at six
118 o'clock p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof. That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Plaintiff further complains of defendant, and for a nineteenth cause of action avers:

I. That defendant is and was at all times herein mentioned a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State.

II. That on the thirteenth day of August, A. D. 1887, the State board of equalization of said State, for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and roll-

ing stock of defendant's railroad, then situated and being within said State, at the sum of eighteen million dollars.

III. That said property was in and by said assessment described as the same was described by defendant in its verified statement thereof furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, and said description was as
119 follows, to wit: Rolling stock, to wit: locomotive (including tenders), 152; sleepers, cars, 14 (¼ belong to Pullman's Palace Car Co.); passenger cars, 108; emigrant and smoking cars, 48; baggage, express and mail cars, 36; cabooses, 70; box freight cars, 1,749; flat freight cars, 1,375; dump, hand and section cars, 271; all other kinds of cars, 47; snow-plows, 3; total number of miles of railway in said State, 719.50 miles; franchise, roadway, road-bed and rails within said State the same as hereinbefore described in the first cause of action herein, which description is hereby referred to and made a part hereof; and the said description of said franchise, roadway, road-bed and rails, so far as the same pertained to and were within the county of Yuba, in said State, were as follows, to wit:

Beginning at a point where the railroad bridge across Bear river intersects the center of the channel of said river; thence running northwesterly through the town of Wheatland, and across the Yuba river to depot in city of Marysville; thence northwesterly through Marysville to the center of railroad bridge across Feather river, which point is on northerly line of Yuba county; right of way, except on public thoroughfares, 100 feet wide, being 15.87 miles in Yuba county.

IV. That within ten days after the third Monday in August, 1887, said State board of equalization did apportion the said total assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant to the counties in said State in which defendant's
120 railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amount of said total assessment so apportioned by said board to the county of Yuba was the sum of $397,025; and the number of miles of defendant's railway laid in said county of Yuba and so assessed, were 15.87 miles.

V. That within ten days after the third Monday in August, 1887, said State board of equalization did transmit to the county auditor of said county of Yuba, a statement showing the length of the main track of defendant's railway within said county, with a description of the whole of the defendant's railway track within said county, including the right of way sufficient for identification; the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, road-bed, rails and rolling stock of defendant's railway in said State, and the amount apportioned to said county of Yuba, and said description in said statement of defendant's railway track, including its right of way in said county, was the same as that hereinbefore given in paragraph III.

VI. That thereafter, and prior to the first Monday in October, 1887, the county auditor of said county did enter said statement of said board on the assessment-roll of said county, and did enter upon said assessment-roll of said county the said amount of said assessment apportioned by said State board of equalization to said
121 county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation. Thereafter, and on the first Monday in October, 1887, the board of supervisors of said county did make and cause to be entered in the proper record book an order stating and declaring the said length of main track of defendant's railway assessed by said State board of equalization within said county, the assessed value per mile of such railway in said county, the number of miles of track, and the assessed value of such railway lying in said county, as fixed by said State board of equalization.

VII. That thereafter, and on the first Monday of October, 1887, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant, assessed and apportioned to said county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of defendant, assessed and apportioned to said county as aforesaid, was the sum of $5,414.01.

VIII. That defendant has never at any time paid said tax, amounting to said sum of $5,414.01, nor any part thereof; that said tax became and was delinquent on the last Monday in December, 1887, at six o'clock, p. m., and upon and at the time of and by reason of such delinquency five per cent. of said tax, to wit, the sum
122 of $270.70 was, by the controller of said State, added to said tax, and no part of said $270.70 so added for delinquency has ever been paid by defendant.

IX. That prior to the third Monday of October, 1887, the said State board of equalization did prepare and transmit to the controller of said State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments," for the fiscal year ending June 30, 1888, both certified by the chairman and clerk of said-State board of equalization, and which said duplicate records included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the county of Yuba.

Before the fourth Monday of October, 1887, said controller did compute at the rates of taxation fixed and levied as aforesaid and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county, and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at

the State capitol of said State, and in two daily newspapers of general circulation published in the city and county of
123 San Francisco, in said State, a notice that he had received from said State board of equalization said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at six o'clock p. m., and that unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof. That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent.

Wherefore, plaintiff demands judgment against defendant for said several sums of State and county taxes delinquent and unpaid as aforesaid, and aggregating the sum of $295,740.71, together with five per cent. thereon for delinquency and non-payment of said taxes, and together with interest on said sum of $295,740.71 at the rate of two per cent. per month, from the last Monday of December, 1887, the time of said delinquency; also for costs of suit, and for its attorneys' fees, as allowed by law.

JOHN P. DUNN,
Controller of State of California,
By FELIX DUNN,
Deputy Controller of State.
LANGHORNE & MILLER,
Attorneys for Controller and Plaintiff.

124 *Demurrer of Defendant to Amended Complaint of Plaintiff.*

On the 16th day of February, 1891, defendant duly served and filed its demurrer to the amended complaint of plaintiff herein as follows:

(Title of Court and Cause.)

Now comes the above-named defendant, The Central Pacific Railroad Company, and demurs to the amended complaint of the plaintiff herein and assigns the following grounds, to wit:

First. That there is a defect of parties plaintiff in this that the counties of Alameda, Butte, Fresno, Merced, Nevada, Placer, Sacramento, San Francisco, San Joaquin, Santa Clara, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Tulare and Yuba should have been joined as parties plaintiff.

Second. That several causes of action have been improperly united, to wit: The first cause of action for the recovery of State taxes has been improperly united with the second cause of action for the recovery of county taxes of the county of Alameda, and has been improperly united with the third cause of action for the recovery of county taxes of the county of Butte, and has been improperly united with the fourth cause of action for the recovery of county taxes of the county of Fresno, and has been improperly

united with the fifth cause of action for the recovery of county taxes of the county of Merced, and has been improperly united
125 with the sixth cause of action for the recovery of county taxes of the county of Nevada, and has been improperly united with the seventh cause of action for the recovery of county taxes of the county of Placer, and has been improperly united with the eighth cause of action for the recovery of county taxes of the county of Sacramento, and has been improperly united with the ninth cause of action for the recovery of county taxes of the city and county of San Francisco, and has been improperly united with the tenth cause of action for the recovery of county taxes of the county of San Joaquin, and has been improperly united with the eleventh cause of action for the recovery of county taxes of the county of Santa Clara, and has been improperly united with the twelfth cause of action for the recovery of county taxes of the county of Shasta, and has been improperly united with the thirteenth cause of action for the recovery of county taxes of the county of Sierra, and has been improperly united with the fourteenth cause of action for the recovery of county taxes of the county of Siskiyou, and has been improperly united with the fifteenth cause of action for the recovery of county taxes of the county of Stanislaus, and has been improperly united with the sixteenth cause of action for the recovery of county taxes of the county of Sutter, and has been improperly united with the seventeenth cause of action for the recovery of county taxes of the county of Tehama, and has been im-
126 properly united with the eighteenth cause of action for the recovery of county taxes of the county of Tulare, and has been improperly united with the nineteenth cause of action for the recovery of county taxes of the county of Yuba.

Third. That the court has no jurisdiction of the subject-matter of the action, nor the person of the defendant herein, for the following reasons: That sections 3666, 3667, 3668, 3669 and 3670 of the Political Code, under the provisions of which said action was instituted, are unconstitutional and void in this, that said sections are in contravention of subdivisions third, tenth and twenty-ninth of section 25 of article IV, of the constitution of the State of California, which prohibit special legislation, and are in contravention of section 21 of article I, of the constitution of said State, and are in contravention of section 1 of article XII of the constitution of said State in this, that burdens are placed upon corporations operating a railroad in more than one county that are not placed upon corporations operating a railroad in only one county. That said sections of said Political Code are in contravention of section 1 of the 14th amendment to the Constitution of the United States in this, that by the provisions thereof, this defendant is deprived of and denied the equal protection of the laws.

That so far as the assessment of railroads operated in more than one county is concerned, sections 4 and 10 of article XIII of the State constitution are in contravention of section 1 of the
127 14th amendment of the Constitution of the United States, as thereby and thereunder persons or corporations owning such

roads are deprived of property without due process of law and are denied the equal protection of the laws. Hence the assessment and taxes herein are void.

Fourth. That the plaintiff has not the legal capacity to sue herein, for the reason that said sections of the Political Code and said sections of the State constitution are unconstitutional and void, as set forth in said third cause of demurrer, and because no law authorizes plaintiff to maintain said action.

Fifth. That the complaint does not state facts sufficient to constitute a cause of action.

Wherefore, defendant prays judgment against plaintiff with costs.

H. S. BROWN,
Attorney for Defendant.

Order Overruling Defendant's Demurrer.

On the 12th day of September, 1892, the court, after full argument, overruled the said demurrer by an order entered as follows:

(Title of Court and Cause.)

In this cause the demurrer to the amended complaint having been heretofore submitted to the court for consideration and decision it is by the court ordered that the said demurrer be and the same
128 is hereby overruled, with ten days' leave to answer.
(Opinion of court filed.)

Answer of Defendant.

On the 12th day of October, 1892, the defendant duly served and filed its answer herein as follows:

(Title of Court and Cause.)

Comes now the above-named defendant, Central Pacific Railroad Company, and for answer to the amended complaint of plaintiff herein says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State, either for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof, in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of

them, of defendant's railroad then situate and being within
129 said State, in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said complaint, defendant says it has no knowlege or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment, or any assessment, described as alleged in said third paragraph of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at all, said State board of equalization did apportion the said total alleged assessment, or any assessment, of the franchise, road-bed, roadway, rails and rolling stock, or any of them, of defendant to the counties in said State in which defendant's railway was located, or any of them, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amounts of said total alleged assessment alleged to have been apportioned by said board to said counties respectively, and the number of miles of defendant's railway laid in said counties were as alleged in the fourth paragraph of said complaint, or otherwise.

V.

Defendant denies that within ten days after the third Mon-
130 day in August, 1887, or at all, the said State board of equalization did transmit to each or any of the county auditors of said counties, or any of them, a statement showing the length of the main track of defendant's railway within the counties of said auditors, respectively, or any of them, with a description of the whole or any portion of defendant's railway track within the counties of said auditors, respectively, or any of them, denies that said alleged statement included the right of way sufficient for identification, or any of it, or the assessed value per mile of the same as fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any thereof, of defendant's railway in said State, nor the amount alleged to have been apportioned to the counties of said auditors, respectively, and denies that said alleged descriptions in said alleged statements of defendant's railway track, including its right of way in said counties, respectively, were the same, respectively, as those given in paragraph III of said complaint.

VI.

Defendant denies that thereafter and prior to the first Monday in October, 1887, or at any other time, the county auditor of each of said counties, or any of said counties, did enter said alleged statement, alleged to have been so transmitted to him, upon the assess-

ment-roll of his county; denies that he did enter upon said
131 assessment-roll of his county the said amount of said alleged assessment, alleged to have been apportioned by said State board of equalization to his county, in the column of the assessment-roll of his county which showed the total value of all property of his county for taxation, or elsewhere; denies that thereafter or on the first Monday in October, 1887, or at any other time, the board of supervisors of each, or any of said counties, did make or cause to be entered in the proper or any record book or books, respectively, an order stating and declaring the length of main track of defendant's railway alleged to have been assessed by said State board of equalization within their respective counties, nor the assessed value per mile of such railway, nor the number of miles of track, nor the alleged assessed value of such railway lying in their respective counties, nor as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday of October, 1887, or at any other time, the board of supervisors of each or any of said counties did levy the State tax of said State of California according to the rate alleged to have been theretofore fixed for such tax for the fiscal year ending June 30, 1888, by said State board of equalization, or according to any other rate, upon the taxable property in its county, or upon the property of defendant alleged
132 to have been assessed and apportioned to its county as aforesaid; denies that the alleged taxes so alleged to have been levied in all of said counties for the purpose of State taxation upon said property of defendant alleged to have been assessed and apportioned to said counties as aforesaid was the sum of $109,440.00, or any other sum.

VIII.

Denies that upon the seventeenth day of September, 1887, or any other day, said State board of equalization did fix the rate of State taxation for the fiscal year ending June 30, 1888, at the rate of $0.608 on each one hundred dollars, or any other rate.

IX.

Denies that said alleged State tax ever was a tax, or became or was delinquent on the last Monday in December, 1887, at six o'clock p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes, State or county, or otherwise, or was ever charged to the collector of taxes, or any other State or county official, as a delinquent tax to be by him collected; denies that upon or at the time of, or by reason of, such delinquency, five per cent. of said alleged State tax, to wit: the sum of $5,472.00, or any other per cent. of same, was by the controller of said State added to said alleged State tax.

X.

Denies that prior to the third Monday of October, 1887, or
133 at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways, or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, certified by the chairman and clerk of said State board of equalization, or any record whatever; denies that said alleged duplicate records included the said alleged assessment of defendant's said property, or said alleged apportionment of the said alleged assessment of defendant's property to the said counties or any of them.

(It is agreed by plaintiff and defendant that all averments in the amended complaint herein as to legal services or attorney's fees are deemed to be fully and separately denied by defendant.)

As to plaintiff's second alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for
134 the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway, then situated and being within said State, in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said second count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment or any assessment described as alleged in said third paragraph of said second count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of

them, to the counties in said State or any of them in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Alameda was the
135 sum of $2,089,451.00 or any other sum, and denies that the number of miles of defendant's railway laid in said county of Alameda, and so alleged to have been assessed, were 83.52, or any other number of miles.

V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said county of Alameda a statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way sufficient for identification; denies that said alleged statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said county of Alameda, and denies that said alleged description in said alleged statement of defendant's railway track, including its right of way in said county, was the same as that given in paragraph III of said second count of said complaint.

VI.

Defendant denies that thereafter and prior to first Monday
136 in October, 1887, or at any other time the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessment alleged to have been apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter and on the first Monday in October, 1887, or at any other time, the board of supervisors of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday of October, 1887, or at any other time, the board of supervisors of said

county did levy the county taxes upon the taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the
137 purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $12,762.07 or any other sum.

VIII.

Defendant denies that said alleged tax ever was a tax or became or was delinquent on the last Monday in December, 1887, at six o'clock, p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes—State or county or otherwise—or was ever charged to the collector of taxes or any other State or county official, as a delinquent tax to be by him collected, and denies that upon or at the time of or by reason of such alleged delinquency five per cent. of said tax, to wit: the sum of $638.10 or any other per cent. or sum was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Mon- of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and
138 denies that said allegated duplicate records included the said alleged assessments of defendant's said property nor the said alleged apportionment of the alleged assessment of defendant's property to the county of Alameda.

As to plaintiff's third alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1880, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railroad, then situated and being within said State in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said third count of said complaint, defendant says it has
139 no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment or any assessment described as alleged in said third paragraph of said third count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State, or any of them, in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Butte was the sum of $1,125,782.00, or any other sum, and denies that the number of miles of defendant's railway laid in said county of Butte and so alleged to have been assessed were forty-five miles or any other number of miles.

V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said county of Butte a statement showing the length of the main track of defendant's
140 railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way sufficient for identification; denies that said alleged statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said county of Butte, and denies that said alleged description in said alleged statement of defendant's railway track including its right of way in said county was the same as that given in paragraph III of said third count of said complaint.

VI.

Defendant denies that thereafter and prior to the first Monday in October, 1887, or at any other time, the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessment alleged to have been apportioned by said State board of equalization to said county in the column of the said county assessment-roll which

showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter and on the first Monday in October, 1887, or at any other time, the board of supervisors
141 of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within the said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday of October, 1887, or at any other time, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $11,123.73, or any other sum.

VIII.

Defendant denies that said alleged tax ever was a tax or became or was delinquent on the last Monday in December, 1887, at six o'clock p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delin-
142 quent taxes, State or county or otherwise, or was ever charged to the collector of taxes or any other State or county official, as a delinquent tax to be by him collected, and denies that upon or at the time of or by reason of such alleged delinquency five per cent. of said tax, to wit: the sum of $556.18, or any other per cent. or sum was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged assessments of defendant's said alleged apportionment of the alleged assessment of defendant's property to the county of Butte.

As to plaintiff's fourth alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business
143 of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railroad, then situated and being within said State in the sum of eighteen million dollars or any other sum.

III.

As to each and every allegation contained in the third paragraph of said fourth count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment, or any assessment, described as alleged in said third paragraph of said fourth count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of
144 the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State, or any of them, in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Fresno was the sum of $1,504,295.00, or any other sum, and denies that the number of miles of defendant's railway laid in said county of Fresno, and so alleged to have been assessed, were 60.13 or any other number of miles.

V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said county of Fresno a statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way suffi-

showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter and on the first Monday in October, 1887, or at any other time, the board of supervisors
141 of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within the said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday of October, 1887, or at any other time, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $11,123.73, or any other sum.

VIII.

Defendant denies that said alleged tax ever was a tax or became or was delinquent on the last Monday in December, 1887, at six o'clock p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delin-
142 quent taxes, State or county or otherwise, or was ever charged to the collector of taxes or any other State or county official, as a delinquent tax to be by him collected, and denies that upon or at the time of or by reason of such alleged delinquency five per cent. of said tax, to wit: the sum of $556.18, or any other per cent. or sum was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged assessments of defendant's said alleged apportionment of the alleged assessment of defendant's property to the county of Butte.

As to plaintiff's fourth alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business
143 of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railroad, then situated and being within said State in the sum of eighteen million dollars or any other sum.

III.

As to each and every allegation contained in the third paragraph of said fourth count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment, or any assessment, described as alleged in said third paragraph of said fourth count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of
144 the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State, or any of them, in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Fresno was the sum of $1,504,295.00, or any other sum, and denies that the number of miles of defendant's railway laid in said county of Fresno, and so alleged to have been assessed, were 60.13 or any other number of miles.

V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said county of Fresno a statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way suffi-

cient for identification; denies that said alleged statement showed the alleged assessed value per mile of the same, as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said county of Fresno; and denies that said alleged description in said alleged state-
145 ment of defendant's railway track, including its right of way in said county, was the same as that given in paragraph III of said fourth count of said complaint.

VI.

Defendant denies that thereafter, and prior to the first Monday in October, 1887, or at any other time, the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessment alleged to have been apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter, and on the first Monday in October, 1887, or at any other time, the board of supervisors of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county, as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday
146 of October, 1887, or at any other time, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $15,725.11, or any other sum.

VII-.

Defendant denies that said alleged tax ever was a tax or became or was delinquent on the last Monday in December, 1887, at 6 o'clock p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes—State or county or otherwise—or was ever charged to the collector of taxes or any other State or county official, as a delin-

quent tax to be by him collected, and denies that upon or at the time of or by reason of such alleged delinquency five per cent. of said tax, to wit, the sum of $786.25, or any other per cent. or sum, was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did
147 prepare or transmit to the controller of said State a duplicate or other record of assessment of railways, or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged assessments of defendant's said property, nor the said alleged apportionment of the alleged assessment of defendant's property to the county of Fresno.

As to plaintiff's fifth alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of
148 them, of defendant's railroad, then situated and being within said State in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said fifth count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment, or any assessment, described as alleged in said third paragraph of said fifth count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of

them, to the counties in said State, or any of them in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Merced was the sum of $919,388, or any other sum, and denies that the number of miles of defendant's railway laid in said county of Merced, and so alleged to have been assessed, were 36.75, or any other number of miles.

149

V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said county of Merced a statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way sufficient for identification; denies that said alleged statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said county of Merced, and denies that said alleged description in said alleged statement of defendant's railway track, including its right of way in said county, was the same as that given in paragraph III of said fifth count of said complaint.

VI.

Defendant denies that thereafter and prior to the first Monday in October, 1887, or at any other time, the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessment alleged to have been apportioned by said State board of equalization to said

150 county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter and on the first Monday in October, 1887, or at any other time, the board of supervisors of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county, as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday of October, 1887, or at any other time, the board of supervisors of said

county did levy the county taxes upon the taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the purpose of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $10,959.10 or any other sum.

VIII.

151 Defendant denies that said alleged tax ever was a tax or became or was delinquent on the last Monday in December, 1887, at 6 o'clock p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes—State or county or otherwise—or was ever charged to the collector of taxes or any other State or county official, as a delinquent tax to be by him collected, and denies that upon or at the time of or by reason of such alleged delinquency five per cent. of said tax, to wit: the sum of $547.95 or any other per cent. or sum was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged assessments of defendant's said property nor the said alleged apportionment of the alleged assessment of defendant's property to the county of Merced.

As to the plaintiff's sixth alleged cause of action defendant says:

I.

152 Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to defendant then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railroad, then situated and being within said State, in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said sixth count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment, or any assessment, described as alleged in said third paragraph of said sixth count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equali-
153 zation did apportion the said total alleged assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State, or any of them in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Nevada was the sum of $756,776.00, or any other sum, and denies that the number of miles of defendant's railway laid in said county of Nevada, and so alleged to have been assessed, were 30.25, or any other number of miles.

V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said county of Nevada a statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way sufficient for identification; denies that said alleged statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said county of Nevada, and denies that said alleged description in said alleged state-
154 ment of defendant's railway track including its right of way in said county was the same as that given in paragraph III of said sixth count of said complaint.

VI.

Defendant denies that thereafter and prior to the first Monday in October, 1887, or at any other time, the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessment alleged to have been apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which

showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter and on the first Monday in October, 1887, or at any other time, the board of supervisors of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county, as alleged to have been fixed by said State board of equalization.

VII.

155 Defendant denies that thereafter and on the first Monday of October, 1887, or at any other time, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $12,047.87, or any other sum.

VIII.

Defendant denies that the said alleged tax ever was a tax or became or was delinquent on the last Monday in December, 1887, at six o'clock, p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes, State or county or otherwise, or was ever charged to the collector of taxes, or any other State or county official, as a delinquent tax to be by him collected, and denies that upon or at the time of or by reason of such alleged delinquency five per cent. of said tax, to wit: the sum of $602.39, or any other per cent. or sum, was by the controller of said State added to said tax.

IX.

156 Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged assessments of defendant's said property nor the said alleged apportionment of the alleged assessment of defendant's property to the county of Nevada.

As to plaintiff's seventh alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of
157 them, of defendant's railroad then situated and being within said State in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said seventh count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment, or any assessment, described as alleged in said third paragraph of said seventh count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State, or any of them, in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Placer was the sum of $2,820,709.00, or any other sum, and denies that the number of miles of defendant's railway laid in said county of Placer and so alleged to have been assessed were 112.75 or any other number of miles.

158 V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said county of Placer a statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way suffi-

cient for identification; denies that said alleged statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails, and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said county of Placer, and denies that said alleged description in said alleged statement of defendant's railway track, including its right of way in said county, was the same as that given in paragraph III of said seventh count of said complaint.

VI.

Defendant denies that thereafter and prior to the first Monday in October, 1887, or at any other time, the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessment alleged
159 to have been apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter and on the first Monday in October, 1887, or at any other time, the board of supervisors of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county, as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday of October, 1887, or at any other time, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid, was the sum of $35,033.21, or any other sum.

160 VIII.

Defendant denies that said alleged tax ever was a tax or became or was delinquent on the last Monday in December, 1887, at six o'clock, p. m., or at any other time, or that it ever became, delinquent; denies that the same was ever placed on any list of delinquent taxes, State or county or otherwise, or was ever charged to the collector of taxes, or any other State or county official, as a delinquent tax to be by him collected, and denies that upon or at the time of or by reason

of such alleged delinquency five per cent. of said tax, to wit: the sum of $1,751.66, or any other per cent. or sum was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of the said State a duplicate or other record of assessment of railways or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged assessments of defendant's said property, nor the said alleged apportionment of the alleged assessment of defendant's property to the county of Placer.

161 As to plaintiff's eighth alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railroad, then situated and being within said State, in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said eighth count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment, or any assessment, described as alleged in said third
162 paragraph of said eighth count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of

them, to the counties in said State, or any of them, in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Sacramento was the sum of $1,025,712.00, or any other sum, and denies that the number of miles of defendant's railway laid in said county of Sacramento and so alleged to have been assessed were 41 miles, or any other number of miles.

V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said county of Sacramento a statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right
163 of way sufficient for identification; denies that said alleged statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to the said county of Sacramento, and denies that said alleged description in said alleged statement of defendant's railway track, including its right of way in said county, was the same as that given in paragraph III of said eighth count of said complaint.

VI.

Defendant denies that thereafter and prior to the first Monday in October, 1887, or at any other time, the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessment alleged to have been apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter and on the first Monday in October, 1887, or at any other time, the board of supervisors of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged
164 length of main track of defendant's railway alleged to have been assessed by said State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county, as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday of October, 1887, or at any other time, the board of supervisors of said

county did levy the county taxes upon the taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $6,428.71, or any other sum.

VIII.

Defendant denies that said alleged tax ever was a tax, or became or was delinquent on the last Monday in December, 1887, at 6 o'clock, p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes, State or county or otherwise, or was ever charged to the collector of taxes or any other State or county official, as a delinquent tax to be by him collected, and denies that upon or
165 at the time of or by reason of such alleged delinquency five per cent. of said tax, to wit: the sum of $321.43, or any other per cent. or sum, was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged assessments of defendant's said property, nor the said alleged apportionment of the alleged assessment of defendant's property to the county of Sacramento.

As to plaintiff's ninth alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or
166 at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fical year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in State, the franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railroad, then situated and being within said State in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said ninth count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment, or any assessment, described as alleged in said third paragraph of said ninth count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State or any of them in which defendant's railway was located in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; de-
167 nies that the amount of said total alleged assessment alleged to have been apportioned by said board to the city and county of San Franaisco was the sum of $61,543.00, or any other sum, and denies that the number of miles of defendant's railway laid in said city and county of San Francisco and so alleged to have been assessed were 2.46, or any other number of miles.

V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said city and county of San Francisco a statement showing the length of the main track of defendant's railway within said city and county, nor a description of the whole or any of defendant's railway track within said city and county, nor the right of way sufficient for identification; denies the said alleged statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said city and county of San Francisco, and denies that said alleged description in said alleged statement of defendant's railway track, including its right of way in said city and county, *nor* the same as that given in paragraph III of said ninth count of said complaint.

168 VI.

Defendant denies that thereafter, and prior to the first Monday in October, 1887, or at any other time, the county auditor of said city and county did enter said statement of said board on the assessment-roll of said city and county; denies that he entered upon said assessment-roll of said city and county the said amount of said alleged assesssment alleged to have been apportioned by said State

board of equalization to said city and county, in the column of the said city and county assessment-roll which showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter, and on the first Monday in October, 1887, or at any other time, the board of supervisors of said city and county did make or caused to be entered in the proper or other record book or books an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within said city and county, nor the alleged assessed value per mile of such railway in said city and county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said city and county, as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter, and on the first Monday of October, 1887, or at any other time, the board of supervisors of
169 said city and county did levy the city and county taxes upon the taxable property of said city and county, including the property of defendant alleged to have been assessed and apportioned to said city and county as aforesaid; and denies that the alleged tax so alleged to have been levied for the purposes of said alleged city and county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said city and county as aforesaid was the sum of $706.39, or any other sum.

VIII.

Defendant denies that said alleged tax ever was a tax, or became or was delinquent on the last Monday in December, 1887, at six o'clock, p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes, State or county or otherwise, or was ever charged to the collector of taxes, or any other State or county official, as a delinquent tax to be by him collected; and denies that upon or at the time of or by reason of such alleged delinquency five per cent. of said tax, to wit, the sum of $35.31, or any other per cent. or sum, was, by the controller of said State, added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate
170 or other record of assessment of railways, or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization; and denies that said alleged duplicate records included the said alleged assessments of defendant's said property, nor the said alleged apportionment of the alleged assessment of defendant's property to the city and county of San Francisco.

As to plaintiff's tenth alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or ortherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess so defendant, the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of them, of
171 defendant's railroad, then situated and being within said State in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said tenth count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment, or any assessment, described as alleged in said third paragraph of said tenth count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State, or any of them in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of San Joaquin was the sum of $1,419,736.00, or any other sum; and denies that the number of miles of defendant's railway laid in said county of San Joaquin and so alleged to have been assessed were 56.75 or any other number of miles.

172 V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said county of San Joaquin a statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way sufficient for identification; denies that said alleged statement

showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said county of San Joaquin; and denies that said alleged description in said alleged statement of defendant's railway track, including its right of way in said county, was the same as that given in paragraph III of said tenth count of said complaint.

VI.

Defendant denies that thereafter and prior to the first Monday in October, 1887, or at any other time, the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assess-
173 ment alleged to have been apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter and on the first Monday in October, 1887, or at any other time, the board of supervisors of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged length of the main track of defendant's railway alleged to have been assessed by said State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county, as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday of October, 1887, or at any other time, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $8,306.78, or any other sum.

174 VIII.

Defendant denies that said alleged tax ever was a tax or became or was delinquent on the last Monday in December, 1887, at 6 o'clock, p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes—State and county or otherwise—or was ever charged to the collector of taxes, or any other State or county official, as a delinquent tax to be by him collected, and denies that upon or at the time of or by

reason of such alleged delinquency five per cent. of said tax, to wit: the sum of $415.33, or any other per cent. or sum, was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged assessments of defendant's said property, nor the said alleged apportionment of the alleged assessment of defendant's property to the county of San Joaquin.

175 As to plaintiff's eleventh alleged cause of action, defendant says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railroad then situated and being within said State in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said eleventh count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment or any assessment, described as alleged in said third
176 paragraph of said eleventh count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State, or any of them in which de-

fendant's railway was located in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amount of said total alleged assessment, alleged to have been apportioned by said board to the county of Santa Clara was the sum of $212,648.00, or any other sum, and denies that the number of miles of defendant's railway laid in said county of Santa Clara, and so alleged to have been assessed, were 8.50, or any other number of miles.

V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of the said county of Santa Clara, a statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way sufficient for identification; denies that said alleged
177 statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said county of Santa Clara, and denies that said alleged description in said alleged statement of defendant's railway track, including its right of way in said county, was the same as that given in paragraph III of said eleventh count of said complaint.

VI.

Defendant denies that thereafter, and prior to the first Monday in October, 1887, or at any other time, the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessment alleged to have been apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter, and on the first Monday in October, 1887, or at any other time, the board of supervisors of said county did make or cause to be entered in the proper or other record book or books, an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said
178 State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county, as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday of October, 1887, or at any other time, the board of supervisors of said county did levy the county taxes upon the taxable property of said

county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $1,160.56, or any other sum.

VIII.

Defendant denies that said alleged tax ever was a tax or became or was delinquent on the last Monday of December, 1887, at 6 o'clock p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes, State or county, or otherwise, or was ever charged to the collector of taxes, or any other State or county official, as a delinquent tax to be by him collected, and denies that upon or at the time of,
179 or by reason of, such alleged delinquency five per cent. of said tax, to wit: the sum of $58.02, or any other per cent. or sum, was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged assessments of defendant's said property, nor the said alleged apportionment of the alleged assessment of defendant's property to the county of Santa Clara.

As to plaintiff's twelfth alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or
180 at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railroad, then situated and being within said State, in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said twelfth count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment, or any assessment, described as alleged in said third paragraph of said twelfth count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State, or any of them in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies
181 that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Shasta was the sum of $2,053,426.00, or any other sum, and denies that the number of miles of defendant's railway laid in said county of Shasta, and so alleged to have been assessed, were 87.8, or any other number of miles.

V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said county of Shasta a statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way sufficient for identification; denies that said alleged statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said county of Shasta, and denies that said alleged description in said alleged statement of defendant's railway track, including its right of way in said county, was the same as that given in paragraph III of said twelfth count of said complaint.

VI.

Defendant denies that thereafter and prior to the first Mon-
182 day in October, 1887, or at any other time, the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessment alleged to have been apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for

taxation, or elsewhere; denies that thereafter and on the first Monday in October, 1887, or at any other time, the board of supervisors of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county, as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday of October, 1887, or at any other time, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the
183 purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $33,717.25, or any other sum.

VIII.

Defendant denies that said alleged tax ever was a tax or became or was delinquent on the last Monday in December, 1887, at 6 o'clock, p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes, State or county, or otherwise, or was ever charged to the collector of taxes or any other State or county official, as a delinquent tax to be by him collected, and denies that upon or at the time of or by reason of such alleged delinquency five per cent. of said tax, to wit: the sum of $1,685.86, or any other per cent. or sum, was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged
184 assessments of defendant's said property nor the said alleged apportionment of the alleged assessment of defendant's property to the county of Shasta.

As to plaintiff's thirteenth alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof, in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railroad, then situated and being within said State, in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said thirteenth count of said complaint, defendant
185 says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment, or any assessment, described as alleged in said third paragraph of said thirteenth count of said complaint, and denies each and every allegation therein *ob*tained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State, or any of them in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Sierra, was the sum of $53,787.00, or any other sum, and denies that the number of miles of defendant's railway laid in said county of Sierra and so alleged to have been assessed were 2.15 miles, or any other number of miles.

V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization
did transmit to the county auditor of said county of Sierra, a
186 statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way sufficient for identification; denies that said alleged

statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said county of Sierra, and denies that said alleged description in said alleged statement of defendant's railway track, including its right of way in said county, was the same as that given in paragraph III of said thirteenth count of said complaint.

VI.

Defendant denies that thereafter and prior to the first Monday in October, 1887, or at any other time, the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessment alleged to have been apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter and on the first Monday in October, 1887, or at any other time, the board of supervisors of
187 said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county nor the number of miles of track, nor the alleged assessed value of said railway lying in said county, as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday of October, 1887, or at any other time the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $1,125.22 or any other sum.

VIII.

Defendant denies that said alleged tax ever was a tax or became or was delinquent on the last Monday in December, 1887, at six o'clock p. m., or at any other time, or that it ever became de-
188 linquent; denies that the same was ever placed on any list of delinquent taxes, State or county or otherwise, or was ever charged to the collector of taxes, or any other State or county official, as a delinquent tax to be by him collected, and denies that upon or at the time of or by reason of said alleged delinquency five per

cent. of said tax, to wit: the sum of $56.26, or any other per cent. or sum, was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged assessments of defendant's said property, nor the said alleged apportionment of the alleged assessment of defendant's property to the county of Sierra.

As to plaintiff's fourteenth alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business
189 of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railroad, then situated and being within said State, in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said fourteenth count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment or any assessment described as alleged in said third paragraph of said fourteenth count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of the fran-
190 chise, roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State, or any of them,

in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Siskiyou was the sum of $1,389,465.00, or any other sum, and denies that the number of miles of defendant's railway laid in said county of Siskiyou, and so alleged to have been assessed, were 55.54, or any other number of miles.

V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said county of Siskiyou a statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way sufficient for identification; denies that said alleged statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, roadbed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said county of Siskiyou, and denies the said alleged description in said alleged
191 statement of defendant's railway track, including its right of way in said county, was the same as that given in paragraph III of said fourteenth count of said complaint.

VI.

Defendant denies that thereafter and prior to the first Monday in October, 1887, or at any other time, the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessment alleged to have been apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter and on the first Monday in October, 1887, or at any other time, the board of supervisors of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county, as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday
192 of October, 1887, or at any other time, the board of supervisors of said county did levy the county taxes upon the

taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the purpose of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $13,088.76 or any other sum.

VIII.

Defendant denies that said alleged tax ever was a tax or became or was delinquent on the last Monday in December, 1887, at 6 o'clock, p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes—State or county or otherwise—or was ever charged to the collector of taxes, or any other State or county official, as a delinquent tax to be by him collected, and denies that upon or at the time of or by reason of such alleged delinquency five per cent. of said tax, to wit: the sum of $654.43, or any other per cent. or sum, was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization
193 did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged assessments of defendant's said property, nor the said alleged apportionment of the alleged assessment of defendant's property to the county of Siskiyou.

As to plaintiff's fifteenth alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of them,
194 of defendant's railroad, then situated and being within said State in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said fifteenth count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment or any assessment described as alleged in said third paragraph of said fifteenth count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State, or any of them in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Stanislaus was the sum of $566,143.00, or any other sum, and denies that the number of miles of defendant's railway laid in said county of Stanislaus, and so alleged to have been assessed, were 22.63, or any other number of miles.

195 V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said county of Stanislaus a statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way sufficient for identification; denies that said alleged statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said county of Stanislaus, and denies that said alleged description in said alleged statement of defendant's railway track, including its right of way in said county, was the same as that given in paragraph III of said fifteenth count of said complaint.

VI.

Defendant denies that thereafter and prior to the first Monday in October, 1887, or at any other time, the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessment alleged
196 to have been apportioned by said State board of equalization to said county, in the column of the said county assessment-

roll which showed the total value of all property of said county for taxation, or elsewhere, denies that thereafter and on the first Monday in October, 1887, or at any other time, the board of supervisors of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday of October, 1887, or at any other time, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $3,310.24, or any other sum.

197 VIII.

Defendant denies that said alleged tax ever was a tax or became or was delinquent on the last Monday in December, 1887, at 6 o'clock, p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes—State or county or otherwise—or was charged to the collector of taxes, or any other State or county official, as a delinquent tax to be by him collected, and denies that upon or at the time of or by reason of such alleged delinquency five per cent. of said tax, to wit: the sum of $165.51, or any other per cent. or sum, was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged assessments of defendant's said property, nor the said alleged apportionment of the alleged assessment of defendant's property to the county of Stanislaus.

198 As to the plaintiff's sixteenth alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county of said State, the franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railroad, then situated and being within said State, in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said sixteenth count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment, or any assessment, described, as alleged in said third
199 paragraph of said sixteenth count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State, or any of them in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Sutter was the sum of $250,174.00, or any other sum; and denies that the number of miles of defendant's railway laid in said county of Sutter and so alleged to have been assessed were ten miles, or any other number of miles.

V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said county of Sutter a statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of de-

fendant's railway track within said county, nor the right of
200 way sufficient for identification; denies that said alleged statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said county of Sutter, and denies that said alleged description in said alleged statement of defendant's railway track, including its right of way in said county, was the same as that given in paragraph III of said sixteenth count of said complaint.

VI.

Defendant denies that thereafter and prior to the first Monday in October, 1887, or at any other time, the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessments alleged to have been apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter and on the first Monday in October, 1887, or at any other time, the board of supervisors of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said
201 alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county, as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday of October, 1887, or at any other time, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $1,481.03, or any other sum.

VIII.

Defendant denies that said alleged tax ever was a tax or became or was delinquent on the last Monday in December, 1887, at 6 o'clock, p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes—State or county or otherwise—or was ever charged

to the collector of taxes, or any other State or county official,
202 as a delinquent tax to be by him collected, and denies that upon or at the time of or by reason of such alleged delinquency five per cent. of said tax, to wit: the sum of $74.05, or any other per cent. or sum was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged assessments of defendant's said property, nor the said alleged apportionment of the alleged assessment of defendant's property to the county of Sutter.

As to plaintiff's seventeenth alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

203 II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails, and rolling stock, or any of them, of defendant's railroad, then situated and being within said State, in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said seventeenth count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment, or any assessment, described as alleged in said third paragraph of said seventeenth count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of the franchise,

roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State, or any of them in which
204 defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Tehama was the sum of $1,014,204.00, or any other sum, and denies that the number of miles of defendant's railway laid in said county of Tehama, and so alleged to have been assessed, were 40.54, or any other number of miles.

V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said county of Tehama a statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way sufficient for identification; denies that said alleged statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said county of Tehama, and denies that said alleged description in said alleged statement of defendant's railway track, including its right of way in said county, was the same as that given in paragraph III of said seventeenth count of said complaint.

205 VI.

Defendant denies that thereafter, and prior to the first Monday in October, 1887, or at any other time, the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessment alleged to have been apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter, and on the first Monday in October, 1887, or at any other time, the board of supervisors of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county, as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter, and on the first Monday of October, 1887, or at any other time, the board of supervisors of said county did levy the county taxes upon the taxable property
206 of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid; and denies that the alleged tax so alleged to have been levied for the purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $10,540.49, or any other sum.

VIII.

Defendant denies that said alleged tax ever was a tax, or became or was delinquent on the last Monday in December, 1887, at six o'clock, p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes, State or county or otherwise, or was ever charged to the collector of taxes, or any other State or county official, as a delinquent tax to be by him collected; and denies that upon or at the time of or by reason of such alleged delinquency five per cent. of said tax, to wit, the sum of $527.02, or any other per cent. or sum, was, by the controller of said State, added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways, or a duplicate or other
207 record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization; and denies that said alleged duplicate records included the said alleged assessments of defendant's said property, nor the said alleged apportionment of the alleged assessment of defendant's property to the county of Tehama.

As to plaintiff's eighteenth alleged cause of action defendant says:

I.

Defendant denies that it is a corporation, duly or otherwise organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State for the purposes of State and county taxation, or otherwise, for the fiscal year

ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railroad, then situated and being within said State, in the sum of eighteen million dollars, or in any other sum.

208 III.

As to each and every allegation contained in the third paragraph of said eighteenth count of said complaint, defendant says that it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment, or any assessment, described as alleged in said third paragraph of said eighteenth count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did apportion the said total alleged assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State, or any of them in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties, or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Tulare was the sum of $339,736.00 or any other sum, and denies that the number of miles of defendant's railway laid in said county of Tulare, and so alleged to have been assessed, were 13.58 or any other number of miles.

V.

209 Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of the county of Tulare a statement showing the length of the main track of defendant's railway within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way sufficient for identification; denies that said alleged statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railway in said State, nor the amount apportioned to said county of Tulare, and denies that said alleged description in said alleged statement of defendant's railway track, including its right of way in said county, was the same as that given in paragraph III of said eighteenth count of said complaint.

VI.

Defendant denies that thereafter and prior to the first Monday in October, 1887, or at any other time, the county auditor of said

county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessment alleged to have been apportioned by said State board of equalization to said county, in the column of the said county assessment-roll
210 which showed the total value of all property of said county for taxation or elsewhere; denies that thereafter and on the first Monday in October, 1887, or at any other time, the board of supervisors of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county, as alleged to have been fixed by said State board of equalization.

VII.

Defendant denies that thereafter and on the first Monday of October, 1887, or at any other time, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $3,370.18, or any other sum.

VIII.

Defendant denies that said alleged tax ever was a tax or became or was delinquent on the last Monday in December, 1887, at
211 6 o'clock, p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes—State or county or otherwise—or was ever charged to the collector of taxes, or any other State or county official, as a delinquent tax to be by him collected, and denies that upon or at the time of or by reason of such alleged delinquency five per cent. of said tax, to wit, the sum of $168.50, or any other per cent. or sum, was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Monday of October, 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged assessments of defendant's said property nor the said alleged apportion-

ment of the alleged assessment of defendant's property to the county of Tulare.

As to plaintiff's nineteenth alleged cause of action defendant says:

I.

Defendant denies that it is a corporation duly or otherwise
212 organized or existing under the laws of the State of California for the purpose of constructing railroads or carrying on the business of railroading in said State, except as hereinafter specifically set out.

II.

Defendant denies that on the 13th day of August, 1887, or at any other time, the State board of equalization of said State, for the purposes of State and county taxation, or otherwise, for the fiscal year ending June 30, 1888, did assess to the defendant, then the owner and operator thereof in more than one county in said State, the franchise, roadway, road-bed, rails and rolling stock, or any of them, of defendant's railroad, then situated and being within said State, in the sum of eighteen million dollars, or any other sum.

III.

As to each and every allegation contained in the third paragraph of said nineteenth count of said complaint, defendant says it has no knowledge or information sufficient to enable it to answer, and therefore denies that said property was in or by said alleged assessment, or any assessment, described as alleged in said third paragraph of said nineteenth count of said complaint, and denies each and every allegation therein contained.

IV.

Defendant denies that within ten days after the third
213 Monday in August, 1887, or at any other time said State board of equalization did apportion the said total alleged assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant, or any of them, to the counties in said State, or any of them in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties or otherwise; denies that the amount of said total alleged assessment alleged to have been apportioned by said board to the county of Yuba was the sum of $397,025.00, or any other sum, and denies that the number of miles of defendant's railway laid in said county of Yuba, and so alleged to have been assessed, were 15.87, or any other number of miles.

V.

Defendant denies that within ten days after the third Monday in August, 1887, or at any other time, said State board of equalization did transmit to the county auditor of said county of Yuba a statement showing the length of the main track of defendant's railway

within said county, nor a description of the whole or any of defendant's railway track within said county, nor the right of way sufficient for identification; denies that said alleged statement showed the alleged assessed value per mile of the same as alleged to have been fixed by said alleged *pro rata* distribution per mile of the said alleged assessed value of the whole franchise, roadway, roadbed, rails and rolling stock, or any of them, of defendant's
214 railway in said State, nor the amount apportioned to said county of Yuba, and denies that said alleged description in said alleged statement of defendant's railway track, including its right of way in said county, was the same as that given in paragraph III of said nineteenth count of said complaint.

VI.

Defendant denies that thereafter, and prior to the first Monday in October, 1887, or at any other time, the county auditor of said county did enter said statement of said board on the assessment-roll of said county; denies that he entered upon said assessment-roll of said county the said amount of said alleged assessment alleged to have been apportioned by said State board of equalization to said county, in the column of the said county assessment-roll which showed the total value of all property of said county for taxation, or elsewhere; denies that thereafter and on the first Monday in October, 1887, or at any other time, the board of supervisors of said county did make or cause to be entered in the proper or other record book or books an order stating or declaring the said alleged length of main track of defendant's railway alleged to have been assessed by said State board of equalization within said county, nor the alleged assessed value per mile of such railway in said county, nor the number of miles of track, nor the alleged assessed value of said railway lying in said county, as alleged to have been fixed by said State board of equalization.

215 VII.

Defendant denies that thereafter, and on the first Monday of October, 1887, or at any other time, the board of supervisors of said county did levy the county taxes upon the taxable property of said county, including the property of defendant alleged to have been assessed and apportioned to said county as aforesaid, and denies that the alleged tax so alleged to have been levied for the purposes of said alleged county taxation for the fiscal year ending June 30, 1888, upon said property of defendant alleged to have been assessed and apportioned to said county as aforesaid was the sum of $5,414.01, or any other sum.

VIII.

Defendant denies that said alleged tax ever was a tax or became or was delinquent on the last Monday in December, 1887, at six o'clock p. m., or at any other time, or that it ever became delinquent; denies that the same was ever placed on any list of delinquent taxes, State or county or otherwise, or was ever charged to

the collector of taxes, or any other State or county official, as a delinquent tax to be by him collected, and denies that upon or at the time of or by reason of such alleged delinquency five per cent. of said tax, to wit: the sum of $270.70, or any other per cent. or sum, was by the controller of said State added to said tax.

IX.

Defendant denies that prior to the third Monday of October,
216 1887, or at any other time, the said State board of equalization did prepare or transmit to the controller of said State a duplicate or other record of assessment of railways, or a duplicate or other record of apportionment of railway assessments for the fiscal year ending June 30, 1888, and denies that the same was certified to by the chairman and clerk of said State board of equalization, and denies that said alleged duplicate records included the said alleged assessments of defendant's said property, nor the said alleged apportionment of the alleged assessment of defendant's property of the county of Yuba.

And for a further and separate affirmative answer to each and every count and cause of action in said complaint contained:

I.

Defendant refers to and makes part hereof all matters and things stated in the preceding paragraphs of its foregoing answer herein.

II.

Defendant a Corporation—Its Place of Business—Line of Road—Stockholders.

The defendant is a corporation existing under the laws of the United States and of the State of California (as will hereafter more fully appear), and as such has been for many years past, and still is (except in the respect hereinafter stated), the owner of a line of railroad known as the Central Pacific railroad, extending from the Pacific ocean across the State of California and the State of
217 Nevada to Ogden, in the Territory of Utah. The principal place of business of defendant now is, and for many years last past has been, in the city of San Francisco, State of California. Some of its stockholders and members now are, and ever have been, citizens of the United States resident in said State of California, and some of its stockholders and members now are and ever have been, citizens of the United States resident in States other than the State of California.

III.

Length of Road in the Several Counties.

The total length of said railroad in said State of California is 602.22 miles, and the length thereof in the respective counties through which it passes is as follows: In the county of San Fran-

cisco, 4 miles; in the county of Alameda, 83.52 miles; in the county of Santa Clara, 8.50 miles; in the county of San Joaquin, 56.75 miles; in the county of Sacramento, 41 miles; in the county of Placer, 112.75 miles; in the county of Nevada, 30.25 miles; in the county of Sierra, 2.15 miles; in the county of Yuba, 15.87 miles; in the county of Sutter, 10 miles; in the county of Butte, 45 miles; in the county of Tehama, 40.24 miles; in county of Shasta, 18.80 miles; in the county of Stanislaus, 22.63 miles; in the county of Merced, 36.75 miles; in the county of Fresno, 61.6 miles, and in the county of Tulare, 12.65 miles. The length of said road, from the city of Sacramento, through the counties of Sacramento,
218 Placer, Nevada and Sierra, to the eastern boundary of said State, is 186.25 miles.

IV.

Purpose of the Formation of the C. P. R. R. Co. of California.

On the 28th day of June, 1861, a corporation was formed and organized under the laws of the State of California, under the corporate name of the Central Pacific Railroad Company of California. Said corporation was formed for the purpose of constructing, owning, and operating a line of railroad and telegraph, commencing at the city of Sacramento, in said State, and running thence through the counties of Sacramento, Sierra, Placer and Nevada, to the eastern boundary of said State, in the expectation that its proposed railroad would, when constructed, constitute part of a line of railroad extending from the Missouri river to the Pacific ocean, which line it was then supposed was about to be constructed under the legislative supervision and authority of the Government of the United States, and which line of railroad was afterwards so constructed.

V.

Act of Congress of July 1, 1862—*Pacific Railroad Act.*

On or about the first day of July, 1862, the Government of the United States undertook to construct, or to cause to be constructed, a line of railroad from the Missouri river to the Pacific
219 ocean, and to that end Congress passed an act entitled, "An act to aid in the construction of a railroad from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military, and other purposes." To said act defendant here refers by title, and makes it a part of this answer. (See United States Statutes, vol. 12, page 489.)

By said act certain persons therein named were made and erected into a corporation under the name and style of the "Union Pacific Railroad Company;" and said corporation was authorized and empowered to construct, own and operate a line of railroad and telegraph from the Missouri river to the Pacific ocean.

VI.

Like Privileges and Immunities Granted to Defendant.

To facilitate the construction of said road, the Government of the United States, by said act of Congress, adopted the said Central Pacific Railroad Company of California as the instrument or agent of the United States, and conferred upon it the same powers and clothed it with the same privileges and immunities which it conferred upon and clothed the said Union Pacific Railroad Company with, except that the said Central Pacific Railroad Company of California was to commence the construction of said railroad at the Pacifice ocean and build east until it met the said Union Pacific railroad building west.

220

VII.

Act of Congress of July 2, 1864—Amendment.

On or about the 2d day of July, 1864, Congress passed an act entitled, "An act to amend an act entitled, 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government of the United States the use of the same for postal, military and other purposes, approved July 1, 1862;'" to said act defendant here refers by title, and makes the same a part of this answer. (See 13 United States Statutes at Large, page 356.)

VIII.

Intent of Congress in Passing Acts of 1861 and 1864.

The intent and purposes of Congress in passing said acts was to secure the completion of a railroad from the Missouri river to the Pacific ocean, and to secure the use thereof for all time to come to the Government of the United States for the transportion of its mails, troops, munitions of war and public stores.

IX.

C. P. R. R. Co. Accept Terms Offered by Congress.

Said Central Pacific Railroad Company of California filed in the Department of the Interior its acceptance of the terms and
221 conditions of said act of Congress of July 1, 1861, within the time therein designated.

X.

Transfer of Rights to W. P. R. R. Co.

On or about the 31st day of October, 1864, said Central Pacific Railroad Company of California sold and assigned all its rights under the aforesaid acts to a corporation then existing under the

laws of the State of California, and known as the Western Pacific Railroad Company, so far as said rights related to the construction of said railroad and telegraph between the cities of San Jose and Sacramento, in said State of California; said assignment was ratified and confirmed by the United States by an act of Congress, passed on the third day of March, 1865, entitled, "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes, approved July 1, 1862,' and to amend an act amendatory thereof, approved July 2, 1864;" to said act defendant here refers by title, and makes the same a part of this answer. (See 13 United States Statutes at Large, page 504.)

XI.

Railroad Completed.

The said line of railroad, from the Pacific ocean to Ogden, in Utah Territory, was completed and put in operation in 1869,
222 and has been in operation from that time until the present, and still is in operation, and the whole of the railroad mentioned in the said acts of Congress has long since been completed and is now, in accordance with the spirit and intent of said acts of Congress, operated as one continuous line from the Missouri river to the Pacific ocean, and is so operated and maintained for the uses and purposes mentioned in said acts, and the corporations in charge thereof, including this defendant, are agents of the Federal Government charged to carry out the purposes of said Government as expressed in said acts of Congress.

XII.

Consolidation.

In August, 1870, acting under the said acts of Congress, said Central Pacific Railroad Company of California and the said Western Pacific Railroad Company formed themselves into one corporation under the name of the Central Pacific Railroad Company. Said company is the defendant herein, and, as the agent and instrument of the Federal Government, has from the completion of said railroad as aforesaid, until the present time, owned (except in the respect hereinafter stated) and operated said railroad under and by virtue of said acts of Congress, and for the uses and purposes therein mentioned.

XIII.

Indebtedness Secured by Mortgage.

The bonds loaned by the United States under said acts of
223 Congress of July 1, 1862, and July 2, 1864, to said Central Pacific Railroad Company of California were about twenty-seven mil-

lions of dollars. No part of said loan, except the accruing interest thereon, has been paid; but the same now is, and for more than five years last past has been, outstanding. To secure the payment of the same, the United States now have, and ever since the issue of said bonds have had, a lien by mortgage upon the said railroad, its rolling stock, fixtures and franchises. By said act of Congress of July 2, 1864, said Central Pacific Railroad Company of California was authorized to issue its bonds in an amount equal to said United States bonds and to secure the payment of the same by a mortgage upon its said road, telegraph, franchises and properties. Under the provisions of said act said bonds, to the amount of more than five thousand dollars per mile, were issued before the first day of January, 1875, and the payment of the same was secured by a mortgage made by said company upon its said railroad, rolling stock and franchises. Said bonds are unpaid and outstanding, but are not yet due, and the same now are, and ever since their issue have been, secured by the mortgage aforesaid. Many of said bonds now are, and ever have been, owned by citizens and *bona fide* residents of the State of California, while other of said bonds now are, and ever have been, owned by citizens of the United States *bona fide* residents of States other than California.

224 XIV.

Land Mortgage.

To further aid in the construction of its railroad, hereinbefore described, the defendant, on the first day of October, A. D. 1870, made, executed and delivered a mortgage covering all its said lands acquired under the acts of Congress aforesaid in the sum of ten millions of dollars. Said mortgage was duly acknowledged and filed for record in the office of the county recorder of the several counties in which said land is situated, a copy of which is hereto annexed, marked "Exhibit A," and made a part hereof. To secure the payment of said mortgage the defendant issued bonds in the amount of ten million dollars. A part of said bonds have been redeemed, but there still remains due and unpaid $5,749,000.00, which is a valid and subsisting lien upon all of said lands. Said unpaid bonds now are, and ever have been, owned and held by citizens and *bona fide* residents of the State of California; and some of said bonds now are, and ever have been, owned by citizens of the United States *bona fide* residents of States other than the State of California.

The lands covered by said land mortgage are situate in the States of California and Nevada and the Territory of Utah. The aggregate amount of said lands in the State of California is 652,125 acres. Said lands are situated in the following counties in the quantity herein set out as follows: In Sacramento county, 350 acres;
225 in Placer county, 21,621 acres; in Nevada county, 30,595 acres; in Sierra county, 9,665 acres; in Yuba county, 40,664 acres; in Sutter county, 3,008 acres; in Butte county, 159,272 acres;

in Tehama county, 217,499 acres; in Shasta county, 114,606 acres; in Colusa county, 27,650 acres; in El Dorado county, 21,314 acres; in Plumas county, 5,704 acres; in Yolo county, 212.26 acres.

XV.

Mortgaged Lands—Mode and Manner of Assessment—Payment of Taxes.

The lands mentioned in the preceding subdivision are not, and never have been, in any way connected with the railroad business of the defendant. They are agricultural and grazing lands, held, owned and used for farming and grazing purposes.

Said lands and all of them for each of the years 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887 and 1888 were assessed by the assessors of the respective counties in which they are situated at their full cash value, and no deduction from said value was made or allowed on account of said mortgage or the indebtedness secured thereby; on the contrary, the laws of the State of California, under which said assessors acted in making said assessments, prohibited any deduction from said value on account either of the mortgages or the indebtedness secured thereby.

In each of said years the defendant paid in full, at the
226 time the same became payable, all the taxes levied upon said lands, amounting in the aggregate, for State, county and municipal purposes, to $—.

The laws of the State of California, then and ever since in force, provide that in the assessment and valuation of lands of like character and situation, and in every respect similar both in quality and use, not owned by railroad or other quasi-public corporation, a mortgage thereon by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, and that in the assessment and valuation of such property for the purposes of taxation, the value of said mortgages shall be deducted therefrom, and the owner of said lands or property only assessed and taxed for the value in excess of the value of the mortgage.

To assist the assessor in the performance of his duties, and to enable him to make the deductions aforesaid, the laws of the State of California make it the duty of the recorder of each county, annually, on or before the first Monday in April, to transmit to the assessor a complete abstract of all mortgages by which any debt is secured remaining unsatisfied on the records of his office at 12 o'clock meridian, on the first Monday of March of said year; and it is further provided by said laws that should any such list be found to contain any instrument relating to lands situated in more than one county, it shall be the duty of the assessor to transmit to
227 the State board of equalization all information relating thereto, and it shall be the duty of the State board to attach an apportionment of valuation of such instrument to be assessed in each county, and to transmit to the assessor of each county men-

tioned as affected in said instrument a statement of valuation of assessment to be levied against said instrument in such county (Political Code, sec. 3678).

In the matter of the valuation of its said lands, for the purposes of taxation, the defendant is, and ever has been, deprived of all the benefits of the said laws, which provide for the deduction of indebtedness secured by mortgage from the valuation of lands by reason of the provisions of section 4 of article XIII of the constitution of the State of California, and the action of assessors in pursuance thereof; while all natural persons and all corporations, not railroad or quasi-public, within the State of California, are entitled to receive, and do receive, the full benefit of said laws, and the deductions required to be made thereunder.

XVI.

Property Belonging to the United States Exempt from Taxation.

That under said constitution all property belonging to the United States is exempt from taxation.

XVII.

Assessment by State Board of Equalization.

On the 13th day of August, 1887, the State board of equal-
228 ization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section 10 of article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails and rolling stock of said railroad against defendant. Said pretended assessment was not made separately upon the franchise, roadway, road-bed, rails and rolling stock, or any properties of said railroad, but all of said properties were blended together in making said assessment, which assessment was then and there so entered upon the minutes of said board. Said assessment is the assessment upon which the several taxes mentioned in the complaint herein are based, and no other assessment than the aforesaid was ever made of said property, or any part thereof, for said fiscal year.

XVIII.

Failure of State Board to Transmit Assessment.

The State board of equalization never did at any time transmit said pretended assessment, or any assessment, of said property, or any part thereof, to the assessor, or to any of the authorities of said county or counties, and never at any time caused the same to be entered upon the assessment-roll of said county or counties for said fiscal year, or for any other year, nor has said pretended assessment, or any part thereof, or any assessment against said defendant or

said property, or any part thereof, ever been entered upon
229 or made part of any assessment roll, book or delinquent list, in or for said county or counties.

XIX.

State Board Never Apportioned Assessment.

Defendant avers, upon its information and belief, that neither said pretended assessment nor any assessment against defendant in respect to said property, or any part thereof, was ever entered upon any assessment roll or book of said county or counties, or upon any delinquent list of said county or counties, nor was any entry relative to the action of the said State board of equalization in respect to the assessment or apportionment of said property, or any part thereof, ever entered upon said assessment roll or book, except a letter from the State board of equalization, addressed to the assessor of said counties, which letter did not contain said assessment, or any part thereof, nor a copy of said assessment, or any part thereof, nor did it contain any apportionment thereof, as provided for in section 10 of article XIII of the constitution of the State of California, hereinbefore referred to, or otherwise.

XX.

No Assessment Was Ever Made or Entered on the Assessment-roll.

Defendant, upon information and belief, avers, that neither said pretended assessment, nor any assessment against this defend-
230 ant, or any other person or persons, in respect to the said property, or any part thereof, was ever entered upon any assessment roll or book of said county, nor upon any delinquent list of said county, nor was any such delinquent list ever published; nor was any entry relative to the action of the said State board of equalization in respect to the assessment or apportionment of said property of defendant, or any part thereof, ever entered upon the said assessment roll or book, except the said letter of the said State board of equalization. Said letter was copied by the assessors of said counties on or about the 1st day of October, 1887, upon the assessment. Upon said assessment-roll opposite said letter is entered in figures, $— and opposite said figures, under the head of taxes due, is entered in figures, $—. The same entries, and no others, appear upon the delinquent lists of said counties for said fiscal year. As defendant is informed and believes, and upon such information and belief, charges the truth and the fact to be, there are in respect to the said property and in respect to defendant, no other or further entries upon any assessment roll, book or delinquent list of said counties, or any of them.

XXI.

State Board Pretended to Assess the Whole of said Property to Defendant.

The State board of equalization, in making the said pre-
231 tended assessment, pretended to assess to and against defendant the full cash value of said railroad, roadway, road-bed, rails, rolling stock and franchises, without deducting therefrom the value of the mortgage, or any part thereof, given and existing thereon as aforesaid, to secure the indebtedness of said company to the holders of said bonds, notwithstanding, as defendant avers, they had full knowledge of the existence of such mortgage.

XXII.

State Board Did Not Treat said Mortgage as an Interest in the Property.

In making said pretended assessment the said State board of equalization did not deem or treat said mortgages as an interest in said property, but did assess the whole value of said property to the defendant in the same manner it would have done had there been no mortgages thereon.

XXIII.

Pretended Assessment and Apportionment Made Before Any Other Assessments in the State.

At the time the said pretended assessment and said pretended apportionment was made by the State board of equalization, no assessment book or roll for the said fiscal year had been completed, or was in existence, nor had a single assessment or valuation for the purposes of taxation for said fiscal year been ascertained or fixed as provided by law, or otherwise, and said board, in making said
232 valuation and apportionment, neither did nor could exercise any of the powers relative to the equalization of values for the purposes of taxation.

XXIV.

Authority Exercised by State Board Violates Provisions of Fourteenth Amendment.

Under the constitution of the State of California, the board of supervisors of the several counties of the State constitute boards of equalization for their respective counties, whose duty it is to equalize the valuation of the taxable property in the county, except the franchise, roadway, road-bed, rails, and rolling stock of railroads operated in more than one county in the State; and to such boards the owners of all property, except as above stated, have the right and privilege to apply for the correction of their assessments, and have the right and privilege of a hearing before the said local boards of equalization. By the provisions of the constitution of California,

and the laws in pursuance thereof, this right and privilege, or any right or privilege, to be heard in relation to assessments is denied to defendant in respect to the property in question. All of which defendant avers is contrary to the provision of the fourteenth amendment to the Constitution of the United States, which declares that no State shall deny to any person within its jurisdiction the equal protection of the laws.

XXV.

Further Violation of the Fourteenth Amendment.

233 The power conferred upon the State board of equalization by section 10 of article XIII of the constitution of California violates the provisions of the fourteenth amendment to the Constitution of the United States, which declares that no State shall deprive any person of life, liberty or property without due process of law; for that said section, as to such power, is self-executing and complete, and does not provide for personal or other notice to be given to the parties to be affected by the exercise of such power; and does not provide for a full or any opportunity of time, place or tribunal for such parties to be heard in defense of their rights; and hence, under and by said provision of the constitution of the State of California, the liability of owners of such property to taxation, and the amount thereof, may be fixed without notice to them or an opportunity to be heard.

XXVI.

Further Discrimination.

The provisions of section 4 of article XIII of the constitution of the State of California providing for the assessment of the property of railroad and other quasi-public corporations is in contravention of the provisions of said fourteenth amendment of the Constitution of the United States, in that it discriminates against such corporations; in this, that, whereas, under said section 4 of said article XIII, of the constitution of the State of California, if the property of natural persons or corporations, not quasi-public, has a 234 mortgage, lien or encumbrance thereon, they are not liable to assessment or taxation upon such property, but only upon the value of their interest in such property, over and above the value of such mortgage, lien or encumbrance; whereas, in the case of the property of railroad and other quasi-public corporations, no such allowance or deduction is made, had or allowed with respect to any mortgage, lien or encumbrance there may be upon such property; and also in this, that while the tenth section of article XIII of the constitution of the State of California provides the same mode for the assessment of the franchises, roadway, road-bed, rails and rolling stock of all railroads operated in more than one county, whether such property be owned by railroad or other quasi-public corporations, or by private corporations, or by natural persons, yet section 4 of article XIII of said constitution permits or allows indebtedness

secured by mortgage, trust deed or otherwise to be deducted from the value of such property only when it is owned by natural persons or corporations not quasi-public, and denies such deduction when the property is owned by railroad or other quasi-public corporations.

XXVII.

Section 10 of article XIII of said constitution of California provides that all property except the franchise, roadway, road-bed, rails and rolling stock of all railroads operated in more than one county in the State, shall be assessed in the county, city and county,
235 town, township or district in which it is situated, in the manner prescribed by law.

The laws of said State prescribe that all property, except that above mentioned, shall be assessed in the county in which it is situated by an assessor elected by the people of such county.

The assessors of the several counties in the State of California have, as the defendant is informed and believes and so avers, in each year since the adoption of said constitution, assessed all moneys, credits, bonds and stocks, dues, franchises and all other matters and things real, personal and mixed, capable of private ownership, situated in their said counties, and all dues and credits, held, owned or in the possession of persons resident in said county, to such persons.

Said assessors for each of said years have assessed to the owners and holders thereof in their respective counties the indebtedness of the defendant secured by the mortgages herein mentioned, but never have, nor does the law permit them so to do, made any deduction from the assessment of any of the property of this defendant on account of the assessments made as aforesaid to the holders of such indebtedness.

XXVIII.

Further Discrimination.

All owners of railroad property, operated in more than one
236 county, by virtue of said section 10 of article XIII, are denied any protection from the laws of the State of California, which—

(*a.*) Require that property shall be taxed in proportion to its value.

(*b.*) Require such proportions to be ascertained by a general law.

(*c.*) Require that before liability be fixed an opportunity to be heard must be given.

(*d.*) Give an appeal from the assessor to boards of equalization.

(*e.*) Require the assessment to be made in the county, and prohibit its being made in localities distant from the situs of the property.

(*f.*) Which prescribe mode and manner of the assessment.

And defendant avers that at and before and ever since the adoption of the constitution of California, now in force, there were and are existing under the laws of said State, corporations of various kinds, formed for the purpose of and actually operating and doing

business and holding and using and operating property in more than one county in said State, and that at all of said times there were and there now are divers natural persons, residents of said State, operating property in more than one county in said State, and that at all of said times there were and now are railroads owned by corporations formed under the general laws of said State, and also by natural persons, which are only operated in one county.

237 That by the provisions of section 10 of article XIII of said State constitution, persons operating railroads in more than one county in the State have been singled out from all other persons operating property in more than one county and denied the right, common to all other persons, to appeal for relief from overvaluations of their property by assessors to the local board of equalization, and denied the rights and privileges accorded by the laws to all other persons in that respect.

Corporations in said State of California now are, and ever have been, formed under general laws relating thereto, and railroad and all other corporations, except public corporations formed or organized for the government of a portion of the State, now are, and ever have been, designated by the laws of California as private corporations. Under the provisions of the laws relating to the formation of private corporations, such corporations may be formed for any purpose for which individuals or natural persons may lawfully associate themselves together; and there now exit in California, and ever have existed, corporations formed under said laws for fire, marine, mutual life, health and accident insurance; building, constructing and operating railroads, wagon roads, telegraphs, bridges, ferries, wharves, chutes and piers, and for constructing and operating canals, for the purposes of acquiring lands in large tracts, and distributing them as homesteads among the corporators, for savings and loans, for mining, for the sale and distribution of water in cities

238 and towns, for manufacturing, mechanical and agricultural purposes; for benevolent, charitable and educational purposes, for cemeteries, agricultural fairs and various other purposes.

In said State of California there now are, and for more than ten years last past have been, various railroads owned, operated and controlled either by individuals, partnerships, or by private corporations other than railroad corporations, to wit: by mining and manufacturing corporations. There now is, and for more than ten years last past has been, a railroad in use and operation extending from the city of Marysville, in the county of Yuba to the town of Oroville, in the county of Butte, in said State, a distance of twenty-seven miles, which said road now is, and ever has been operated in more than one county in this State, and is of the same gauge as the road of this defendant, and has ever been operated for like uses and purposes.

Said road, with all its equipments, now is, and for more than ten years last past has been, in the ownership and under the operation and control of one N. D. Rideout, a citizen of the United States and a resident of the State of California.

There now are, and for more than ten years last past have been, divers other railroads owned and operated in said State by corporations other than railroad corporations, and by individuals and partnerships, and that all of said corporations, individuals, and partnerships are the owners of lands which are assessed by the local assessors of the various counties in which such lands
239 are situated, and all are entitled under the laws of said State to the deductions provided for in said laws, and, as said defendant, upon information and belief, avers, have been allowed such deductions.

XXIX.

System Adopted by said Board Violates Rules of Equality.

The State board of equalization in making said pretended assessment of the said roadway of defendant did willfully and designedly include in the valuation of said roadway the value of fences erected upon the land of coterminous proprietors; and did willfully and designedly value the said roadway at a greater value than the value of other property similarly situated and greater than its actual value, upon the ground that such increased valuation should be made because the title of defendant thereto was acquired by condemnation.

The value of such fences, which were not the property of defendant nor the property of the owners of said roadway, and the increased value affixed to the roadway by the system adopted by the board, are blended in said pretended assessment, and there is no mode or means by which such illegal valuation can be separated from those which may be legal.

Defendant, upon its information and belief, avers that the said State board of equalization adopted a system of valuation in respect to all the property mentioned and referred to in section 10 of
240 article XIII of the constitution, which defines the power of said board, which system was by said board intended to and which did operate unequally, and which was intended to and did violate the rule prescribed by said section—that all of such property should be assessed at its actual value. The system so adopted was applied by the said board in making said pretended assessment of said property, and in making the assessment of all property in the State over which the pretended authority of said board extended.

Said system was to include within the value of the roadway the value of the fences owned and possessed by coterminous proprietors, and to value said roadway at double its actual value, because the right thereto was acquired by condemnation. Said system relative to the rolling stock of railroads was to value the same at sixty per cent. above its actual cost when new, and to value such rolling stock at double its actual value. Said system, relative to the franchise, was to value it at $2,000 per mile, when the actual value, as the board well knew, of said franchise as an entirety did not exceed twenty-five dollars. Said system, as to the valuation of other property to be assessed by the said board, was to value it at double its

actual value. Said system was by the said board adopted and was by it applied in making all the assessments made by it with the intent and purpose wrongfully and unlawfully to cause the owners of property assessed by it to pay double the rate of State and county taxes paid by the owners of property assessed by
241 local assessors. And defendant avers, upon its information and belief, that the said board applied the said system in making the pretended assessment against the property upon which the taxes mentioned in the complaint are based. And defendant, upon its information and belief, avers that the said State board of equalization in making said pretended assessment did not value any of said property at its actual value, but did intentionally, and for the purpose of making defendant pay an unequal proportion of State and county taxes, assess the said property at double its actual value. And defendant avers that the general rule in this State has been to assess property at not over two-thirds its cash or actual value, and that this rule was adopted and acted upon by all local assessors in the State and by the said State board, except in the exercise of the power conferred by section 10, article XIII of the State constitution, for said fiscal year, and that all property, save that assessed by the said State board under said section, has been valued and assessed at one-third less than its actual value, and that the taxes have been collected upon valuations so made.

XXIX (*a*).

Value of Ferry-boats Blended with Other Values.

The western terminus of the said railroad of defendant is in the city of San Francisco, on the west side of the bay of San Francisco. The distance across said bay is five miles, and the whole
242 thereof is part of the navigable waters of said bay. The cars of the company are transported from the end of the railroad track of said road on the eastern side of said bay to the end of the railroad track on the western side of said bay, on steam ferry-boats belonging to the defendant, built, owned and constructed for that purpose, and are of great value. For more than four years past the defendant has been the owner of two steam ferry-boats, one of the tonnage of 1,566 tons and one of the tonnage of 1,012 tons, and during the whole of that time has used said boats for the purposes aforesaid. Said boats now are, and for more than four years last past have been, of a class which are, by law required to be registered, and now are and for more than four years last past have been, duly registered and enrolled in the city and county of San Francisco, State of California. The State board of equalization, in making said pretended assessment of the said roadway, road-bed, rails and rolling stock of defendant, did willfully and designedly include in the valuation thereof the value of said boats, and the value of said boats is blended in said pretended assessment with the value of said roadway, rails, road-bed and rolling stock, and there is no means by which such value can be separated from the valuation

placed by said board upon said roadway, road-bed, rails and rolling stock, or either of them.

XXX.

Defendant's Franchise a Federal One.

And defendant, upon its information and belief, avers, that
243 under and by virtue of the said several acts of Congress, defendant became, and ever since has been, a Federal corporation, and has held its franchise and exercised all its corporate powers under the Government of the United States.

XXXI.

Corporate Powers in Part Derived from Acts of Congress.

And defendant, upon its information and belief, avers, that if by virtue of the several acts of Congress herein referred to, it did not become a Federal corporation, yet it holds, under the Government of the United States, all the corporate powers and franchises granted to it by the said several acts of Congress aforesaid as the trustee of the said Government, and for the governmental uses and purposes specified in said acts.

XXXII.

That the Franchise of Defendant is not Subject to State Taxation.

Under and by virtue of the said several acts of Congress hereinbefore referred to, the defendant was, by the Government of the United States, selected as the means and instrument of that Government to construct the railroad hereinbefore described, and to keep and maintain the same in repair, to the end that the said Government might, when occasion required, use the same for the transportation of its armies and military stores, and for such
244 other purposes as said Government might, in the execution of its powers, desire to use the same. The Government of the United States has never given to the State of California the right to lay any tax upon the franchise, existence or operations of defendant. Such a tax would hinder and impede the lawful operations of the Government of the United States; would hinder, delay and prevent the defendant from performing, as aforesaid, its obligations to the United States, and would nullify and prevent the enforcement of the said several acts of Congress.

XXXIII.

Whole Franchise Assessed.

Said pretended assessment made by the State board of equalization is upon all of the franchises of defendant, and the said board, in valuing the same, included the value of all the franchises and corporate powers held and exercised by defendant under said acts of Congress.

XXXIV.

Tax upon the Franchise Blended with Tax upon Other Property.

The State board of equalization, in making said pretended assessment, included and assessed the franchise of defendant, and in making said pretended apportionment included in the valuation affixed to the property of defendant the value thereof, but such value is not separately stated in said apportionment, nor
245 upon any assessment-roll or delinquent list of said county, but such value is in said pretended apportionment and upon the assessment-roll and delinquent list of said county, blended with the values affixed to the roadway, road-bed, etc., and cannot on either be distinguished or separated from such other values, and the tax upon said franchise is in like manner blended with and cannot be separated from the tax on said roadway, road-bed, etc.

XXXV.

Valuation Excessive.

Neither the franchise, roadway, road-bed, rails or rolling stock were assessed by the State board of equalization in said pretended assessment at their actual value, or in proportion to their value, but were willfully and intentionally assessed greatly in excess and out of proportion to such value, and greatly in excess of and out of proportion to the rate at which all other property in said State is valued for the purposes of taxation, to wit: one hundred per cent. in excess thereof.

XXXVI.

Sole Authority upon Which Tax is Based.

Said pretended assessment is the only assessment of said property, and the pretended tax, for non-payment of which this action is brought, is founded upon said pretended assessment and upon no other assessment.

246 XXXVII.

County Tax Not the Same in All Townships and Districts.

The defendant, upon its information and belief, avers the tax levied by the board of supervisors for said fiscal year was not fixed at the same rate in every township and district in said county or counties. And defendant, upon its information and belief, avers that said tax was levied by said board without authority of law, and that the same was illegally placed upon said assessment roll or book, and delinquent list, because, as defendant avers, the State board of equalization has not apportioned said franchise, etc., to said townships and districts as required by section 10, article XIII of the constitution of California. Upon the assessment-roll and delinquent list of said county or counties the said several taxes, State, county, township and district, are blended and cannot be separated.

XXXVIII.

State Tax Void.

The defendant, upon its information and belief, avers that the State board of equalization never at any time did for the said fiscal year fix or determine any rate of taxation for State purposes, and that the sum and the whole thereof claimed in the complaint for State taxes for said fiscal year is illegal and void.

247 XXXIX.

Plaintiff's Causes of Action Based upon Assessment by State Board of Equalization.

On the 13th day of August, 1887, the State board of equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section 10 of article XIII of the constitution of the State of California did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing, upon the franchise, roadway, road-bed, rails and rolling stock of the railroad hereinbefore described and known as the Central Pacific railroad, against this defendant; that said pretended assessment was not made separately upon the franchise, roadway, road-bed, rails and rolling stock or any properties of said railroad, but all of said properties were blended together in making said assessment, which assessment was then and there so entered upon the minutes of said board. Said pretended assessment is the assessment upon which the several taxes mentioned in plaintiff's complaint are claimed to be due, and that no other assessment than such pretended assessment was ever made against or upon said property or any part thereof.

XL.

No Rules or Regulations.

Said State board of equalization has never, at any time, made or adopted any rule or regulation relative to the assessment or
248 valuation of railway property of any kind, nor has it ever made or adopted any rule to govern or regulate its proceedings in the exercise of the powers conferred upon it by section 10 of article XIII of the constitution of California.

Wherefore, defendant prays it be hence dismissed with costs.

H. S. BROWN AND
FOSHAY WALKER,
Attorneys for Defendant.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

E. H. Miller, Jr., being duly sworn, deposes and says: That he is the secretary of The Central Pacific Railroad Company, defendant in the above-entitled action; that he has read the foregoing answer,

and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true.

E. H. MILLER, JR.

Subscribed and sworn to before me, this 29th day of September, 1892.

[NOTARIAL SEAL.] E. B. RYAN,
Notary Public.

"EXHIBIT A."

This indenture, made this, the first day of October, A. D. 1870, between the Central Pacific Railroad Company, a railroad corporation duly incorporated and organized under and pur-
249 suant to the laws of the State of California, party of the first part, and Charles Crocker and Silas W. Sanderson, both of the city of Sacramento and State of California, parties of the second part, witnesseth:

That whereas, by an act of the Congress of the United States of America, approved on the first day of July, 1862, entitled, "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes," and an act amendatory thereof, approved on the second day of July, 1864, there was granted to the Central Pacific Railroad Company of California, a railroad corporation then being duly incorporated and organized under and pursuant to the laws of the State of California, a large body of the public lands of the United States, to wit: every alternate section of public land, designated by odd numbers, to the amount of ten alternate sections per mile on each side of the railroad and telegraph line of said company, running from Sacramento, in the State of California, to their junction with the railroad and telegraph line of the Union Pacific Railroad Company, at or near Ogden, in Utah Territory, a distance of seven hundred and forty miles, not sold, reserved, or otherwise disposed of by the United States, and to which no pre-emption or homestead claim had attached at the time the line of said railroad was definitely fixed, and not containing minerals other than coal and iron, for the pur-
250 pose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores of the United States;

And whereas, by an act of Congress of the United States of America, approved on the twenty-fifth day of July, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad, in California, to Portland, in Oregon," there was granted to the California & Oregon Railroad Company, a railroad corporation then duly incorporated and organized under and pursuant to the laws of the State of California, a large body of the public lands of the United States, to wit:

Every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of the railroad and telegraph line of said company, running from a point on the line of the Central Pacific railroad, at or near Roseville, in the county of Placer and State of California, to the northern boundary of said State, a distance of two hundred and forty-six miles, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores of the United States, with a further provision to the effect that when any of said alternate sections shall appear to have been previously granted, sold, reserved, occupied by
251 homestead settlers, pre-empted, or otherwise disposed of, other lands, designated as aforesaid, may be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first alternate sections;

And whereas, heretofore, to wit, on the twenty-second day of June, A. D. 1870, the said Central Pacific Railroad Company of California, pursuant to a statute of the State of California in such case made and provided, was consolidated with the Western Pacific Railroad Company, a railroad corporation then duly incorporated and organized under the laws of the State of California, and owning and operating a railroad and telegraph line from the city of Sacramento to the cities of Oakland and San José, in the State of California, a distance of one hundred and fifty miles, into a new corporation, under the corporate name and style of the "Central Pacific Railroad Company."

And whereas, heretofore, to wit, on the twentieth day of August, A. D. 1870, the said last-named corporation, the said California & Oregon Railroad Company, the San Francisco, Oakland & Alameda Railroad Company, a railroad corporation then existing, duly incorporated and organized under the laws of said State, and owning and operating a railroad running from San Francisco, through the city of Oakland, to Haywards, in Alameda county, a distance of twenty-five miles, and the San Joaquin Valley Railroad
252 Company, a railroad corporation duly incorporated and organized under the laws of said State, and then existing by virtue thereof, owning a line of railroad and telegraph running from a point on the road of the said Central Pacific Railroad Company at Lathrop, in the county of San Joaquin, to the town of Visalia, in the county of Tulare, in said State, a distance of one hundred and fifty-two miles, said railroad and telegraph being then only partially constructed, did, pursuant to a statute of said State, in such case made and provided, amalgamate and consolidate themselves into a new corporation, under the corporate name of the "Central Pacific Railroad Company," which last-named corporation is the said party of the first part to this indenture.

And whereas, by force and effect of said consolidation, the said

party of the first part has succeeded to the title to all of said lands and now owns and holds the same.

And whereas, the said party of the first part desires to raise money for the purpose of completing the construction and equipment of said railroad and telegraph line, from the town of Roseville aforesaid to the northern boundary of the State of California, and also for the purpose of completing the construction and equipment of said railroad and telegraph line from the town of Lathrop aforesaid to the town of Visalia aforesaid, and also for the payment of the debts and liabilities of the said party of the first part, and to that end has, by its board of directors, considered and de-
253 termined to issue the bonds of said company, in the sum of one thousand dollars each, to the number of ten thousand, payable to the said parties of the second part, or to the holder thereof, twenty years from date, with interest at the rate of six per cent. per annum, payable semi-annually, on the first days of April and October of each year ensuing its date, payable, both principal and interest, in United States gold coin, in the city of New York; and to secure the payment of said bonds did further consider and determine to mortgage the lands hereinbefore described, except so much thereof as is or shall be included in the rights of way of the railroads and telegraph lines of said company, as defined and granted by the acts of Congress aforesaid, or is being or shall be used in the construction or operation thereof, or for the track, yards, depot grounds, buildings or erections thereof, to the said parties of the second part in trust for the holders of said bonds.

And whereas, it was further considered and determined that said bonds and each of them should bear date on the first day of October, A. D. 1870, and should have attached thereto forty interest coupons, numbered from one to forty inclusive, in the following form:

$—. No. —.

Central Pacific Railroad Company.

For land bond No. —.

Interest coupon for thirty dollars, due —— 1st, 18—.

Payable in the city of New York.

—— ——, *Secretary.*

254 And whereas, it was further considered and determined that said bonds and each of them should be of the following tenor and form:

No. —. $1,000.

Land Bond of the Central Pacific Railroad Company.

The Central Pacific Railroad Company acknowledges itself indebted to Charles Crocker and Silas W. Sanderson, both of the city of Sacramento and State of California, or to the holder hereof, in the sum of one thousand dollars, gold coin of the United States, which

sum it promises to pay to the holder hereof in the city of New York, twenty years from the date hereof, with interest thereon at the rate of six per cent. per annum, payable semi-annually on the first days of April and October of each year ensuing the date hereof, both principal and interest payable in United States gold coin.

This bond is one of ten thousand, each of which is for the same sum of money and of like tenor, and all of which are secured to a mortgage to Charles Crocker and Silas W. Sanderson, as trustees for the holders thereof, on all the lands granted by the United States to the Central Pacific Railroad Company of California by an act of Congress approved on the first day of July, 1862, entitled, "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Gov-
255 ernment the use of the same for postal, military and other purposes," and an act amendatory thereof approved on the second day of July, 1864; also, all the lands granted to the California & Oregon Railroad Company by an act of Congress approved on the twenty-fifth day of July, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad, in California, to Portland, in Oregon" (which lands are now owned by the said Central Pacific Railroad Company by force and effect of a consolidation between said companies pursuant to a statute of the State of California in such case made and provided), save and except so much of said lands as are and shall be included in the right of way for the railroad and telegraph lines of the said Central Pacific Railroad Company, or is being or shall be used in the construction or operation thereof, or for track, yards, depot grounds, buildings, or other erections thereof; and, also, so much thereof as may have been sold previous to the date of said mortgage, to wit, the first day of October, 1870.

In testimony whereof, said company has caused its corporate seal to be hereunto affixed by its president and secretary on this, the first day of October, A. D. 1870.

Now, therefore, this indenture witnesseth: That the said party of the first part, for the purpose of securing the payment of the sums of money mentioned in said bonds, and the interest thereon,
256 and in consideration of the premises, and also for and in consideration of the sum of one dollar to the said party of the first part in hand paid by the parties of the second part, the receipt whereof is hereby acknowleged, has granted, bargained, sold, released, enfeoffed, conveyed and confirmed, and by these presents does grant, bargain, sell, release, enfeoff, convey and confirm unto the said parties of the second part, as trustees, and to their successors and survivor, and their assigns, forever,—

All and singular the said several sections of land so as aforesaid granted by said acts of Congress, and also all the estate, right, title, interest, claim and demand whatsoever, at law or in equity, of, in, or to the same, or any part or parcel thereof, which the said party of the first part now has, holds, owns or is entitled to, or hereafter

may or shall acquire, have, hold, own, or be or become entitled to by force or virtue of the said acts of Congress, saving, excepting and reserving all parts and parcels of said lands as have been sold heretofore, or which are or shall be included in the rights of way of the said railroads and telegraph lines of said company, as defined and granted by the acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings or erections thereof;

To have and to hold, all and singular, the lands hereby granted or intended to be granted, and each and every part and parcel thereof, with the appurtenances thereunto belonging unto
257 the said parties of the second part, and their successors and survivor and their assigns, forever, as trustees, for the uses and purposes, and upon the trusts, terms, conditions and agreements in this indenture set forth and declared.

Provided always, and these presents are upon the express condition, that if the said party of the first part shall well and truly pay, or cause to be paid, to the holders of said bonds, and every of them, the principal sums of money therein mentioned, according to the tenor thereof, with the interest thereon, at the times and in the manner hereinbefore provided, according to the true intent and meaning of these presents, then and from thenceforth this indenture and the estate hereby granted shall cease and determine, and all the right, title and interest in any and all property hereby conveyed to the parties of the second part, not then disposed of under the powers hereby conferred, shall revert to and vest in the said party of the first part.

This indenture further witnesseth, that these presents and the said bonds are made, executed and delivered upon the trusts, terms, conditions and agreements following, that is to say:

That all the lands hereinabove conveyed and mortgaged shall be under the sole and exclusive management and control of the said party of the first part, who shall have full power and authority to make contracts for the sale of the same at such price, on such credit or terms of payment and such other conditions as shall be agreed on by the said parties of the first and second part-, and as
258 shall seem to them best calculated to secure the payment in full of all the bonds issued as hereinbefore provided, until entry or foreclosure by the trustees, as hereinafter provided. But no title to any tract of land contracted to be sold by the said party of the first part shall be given until the whole of the purchase-money of said tract shall be paid to said parties of the second part, or their successors or survivor, in cash, or in said bonds or overdue coupons thereof. And for this purpose it is agreed that the said party of the first part and said trustees shall cause all such lands, as they shall from time to time become subject to sale, to be carefully examined and surveyed, and shall affix to each tract or parcel such price as in their judgment shall be most judicious, having in view the interests of all parties; and said lands shall be and remain at all times thereafter open for sale to any person who may desire to purchase and pay therefor; the prices being, nevertheless, at all times subject

to revision and alteration by the said parties; and the party of the first part may reserve from sale any lands necessary for depot grounds or other purposes connected with the construction or operation of the said railroad or telegraph. The purchaser of any such land shall be at liberty to pay for the same in the aforesaid bonds or overdue coupons at par; and when any tract or parcel of said lands shall have been purchased and paid for, either in bonds, coupons or cash, as hereinbefore provided, the same shall be conveyed by the said parties of the first and second part- to the purchaser in fee-
259 simple, and shall by such conveyance be absolutely and forever released from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said party of the first part. The said trustees shall and will cancel and discharge each and every bond and the coupons thereon, and all overdue coupons, which they may receive in payment for land or by purchase, by defacing the seal of the corporation, perforating the signatures of the president and secretary, and drawing lines across each of the interest coupons on receipt thereof; and all bonds and coupons received in payment for lands as aforesaid shall, when so canceled, be delivered to the said party of the first part.

The said trustees shall apply the proceeds of the sales made by them of lands hereby conveyed to the sole and exclusive purpose of the payment of the bonds provided for in and issued in conformity to the terms of this indenture. And for this purpose all such avails shall, from time to time, as the same are realized, be used in the purchase of such bonds in the market, to be canceled, so long as purchases thereof can be made at par; and whenever such bonds cannot be purchased at that rate said trustees shall advertise for proposals to sell such bonds to them in two newspapers published in the city of New York and one newspaper published in each of the cities of San Francisco and Sacramento; and after receiving such proposals they shall have power to purchase such bonds at the lowest terms so offered. The said party of the first part doth
260 hereby covenant and agree to pay to the holders of said bonds respectively the said principal sums of money therein mentioned, and the interest thereof as aforesaid. If any default shall be made in the payment either of principal or interest on any of said bonds for six months after demand at the place of payment, when the same shall become due, then the said trustees may, on being requested by the holders of at least one hundred thousand dollars of such bonds, enter into and take possession of any of the lands above conveyed, and foreclose this mortgage, and may sell at public auction so much of said lands as may be necessary to discharge all arrears of such interest, and apply the proceeds, after deducting the costs, charges and expenses of such entry, foreclosure and sale to the payment of such arrears of interest. If any such default shall continue for one year from the time of such demand and refusal, the principal sum of all said bonds then outstanding shall become due and payable, and the said trustees may enter into and take possession of all the lands above by these presents mortgaged or conveyed, foreclose this mortgage and sell at public auction all said

lands, or so much thereof as may be necessary, first giving at least six months' previous notice of the time and place of sale in at least one newspaper published in the city of New York, and in one published in each of the cities of San Francisco, Sacramento, Virginia and Salt Lake; and they shall apply the proceeds thereof, after deducting the costs, charges and expenses of
261 such last-mentioned entry, foreclosure and sale, to the payment of all said bonds then outstanding, and the interest accrued thereon, rendering the overplus, if any there shall be, unto the said party of the first part. In case of any sale upon any such foreclosure, or at any such public auction, the said trustees shall make, execute, and deliver a conveyance of the said lands so sold, which shall convey to the purchasers all the rights and privileges of the said party of the first part in and to the property so sold to the same extent as the same shall have been previously enjoyed and held by the said party of the first part. If, after any such entry shall be made or any such foreclosure proceeding shall be commenced, for the satisfying of interest only, as above provided, and before the lands are sold thereon, the said party of the first part shall pay and discharge such interest and deliver the coupons therefor to the said trustees, and pay all the costs, charges and expenses incurred in such entry and foreclosure and the proceedings thereon, then and in every such case the said trustees shall discontinue their proceedings thereon and restore to the said party of the first part all such lands to be held subject to the above conveyance and mortgage, and subject to all the provisions, terms and conditions of these presents in like manner as if such entry had not been made nor such foreclosure proceedings commenced.

In case a vacancy shall happen in the number of trustees
262 hereinbefore mentioned as parties of the second part in this indenture, or if one of them shall be temporarily absent, the remaining trustee shall, while said vacancy or absence exists, have all the rights, exercise all the powers, and discharge all the duties devolving on the said trustees by this instrument. But, as soon as it conveniently may be done, such vacancy shall be filled by the nomination by the remaining trustee of some proper person to fill such vacancy, which nomination shall be submitted to the board of directors of said company, and, if approved by them, the person so nominated and approved, immediately shall become a trustee under this instrument. If said nomination is not approved, another person shall be nominated by said remaining trustee, and in like manner submitted for approval; and so on till three nominations shall have been made. But, if three successive nominations shall be made and none of them shall be approved by said board, said vacancy shall be filled by a committee of three persons selected, one by said remaining trustee, one by said board of directors, and a third by the two thus selected, and the person appointed trustee by a majority of the committee shall be and remain a trustee under this instrument. And the person regularly appointed a trustee to fill a vacancy in either of the forms above specified, shall, from and after his said appointment and his acceptance of the appointment, become

vested with the same estate, powers, rights and interests, and charged with the same duties and responsibilities as if he had been one of
263 the original trustees, parties of the second part, named in and executing this instrument; and the prior remaining trustee may and shall execute such conveyances and instruments as may be proper or necessary to vest the same in such new trustee jointly with him, or to furnish evidence of such vesting. If at any time either of the said trustees shall resign his place as trustee, by a proper deed or writing to that effect, and such resignation shall be accepted by the said party of the first part, then and in every such case the place of such resigning trustee thereupon shall become and be vacant. Whenever all the bonds which shall have been made and issued by the said party of the first part under and in conformity to the provisions of this indenture, with the interest thereon, together with all the expenses incurred by the said trustees in the execution of the trust herein and hereby created, shall have been fully paid, the *the* said trustees shall reconvey to the said party of the first part all and singular the said lands then in the hands of the said trustees, and not before that time sold or disposed of in the execution of the trust hereby created. In case the said trustees shall at any time have any trust moneys on hand, derived from the sale of the lands hereby conveyed, which will not be required to meet any immediate liabilities of the company to which said moneys are by these presents devoted, the said moneys shall be deposited on interest with some bank or trust company in the city of
264 San Francisco or Sacramento, subject to be drawn by checks signed by the trustees or such one of them as they may designate. All the books of the said company and of the trustees, relating to the lands hereby conveyed, shall be mutually open to the inspection of said company and said trustees. It shall be the duty of said trustees to certify and deliver to the said party of the first part the said bonds, as the same from time to time shall be demanded, issued, or used by the said party of the first part.

And it is hereby mutually agreed by and between the parties hereto that the said parties of the second part, and their survivor and successors, and their heirs, executors and administrators, shall not be answerable for the acts, omissions or defaults of each other, nor for anything short of their own gross negligence or willful misfeasance.

It is hereby declared by the parties to this indenture that all the provisions of said acts of Congress, so far as they are applicable, are hereby made and shall be deemed and taken to be a part of this instrument; and the said provisions, in all that concerns the sale and disposal of the said lands hereby conveyed to the parties of the second part, are to be observed and strictly and faithfully carried out and fulfilled. And the said party of the first part covenants and agrees to and with the said parties of the second part, that the said party of the first part shall and will at any and all times hereafter, and from time to time, execute, acknowledge and deliver under its corporate seal, to the said parties of the second

265 part, and their survivor or successors, all such other or further assurances, deeds, mortgages, obligations, transfers, indentures and instruments in writing, and shall and will do and perform all such other or further acts or things as shall or may be necessary or proper, or as their counsel, learned in the law, shall deem necessary, proper or expedient for the better or more effectually securing upon the above conveyed and mortgaged premises the payment of the said bonds so to be issued, and the interest due and to grow due thereon in manner aforesaid, or for carrying into effect the true intent, design, objects and purposes of these presents.

In witness whereof, the said party of the first part has caused these presents to be signed with its corporate name and sealed with its corporate seal, by its president and secretary, the day and year first above written.

[Seal Central Pacific Railroad Company.]

LELAND STANFORD,
President C. P. R. R. Co.
E. H. MILLER, JR.,
Secretary C. P. R. R. Co.

We accept the trust declared in the foregoing instrument.

CHARLES CROCKER. [SEAL.]
SILAS W. SANDERSON. [SEAL.]

First Amendments to Answer.

On the 19th day of November, 1892, defendant duly served
266 and filed by consent of plaintiff and leave of court first duly had and obtained its amendments to its answer herein as follows:

(Title of Court and Cause.)

Comes now the above-named defendant, Central Pacific Railroad Company, and by leave of the court first had and obtained, amends its answer on file herein as follows:

I.

Defendant amends paragraph XXXVII of its affirmative defenses so that the same shall read as follows:

County Tax Not the Same in All Townships and Districts.

The defendant, upon its information and belief, avers that the tax levied by the board of supervisors for said fiscal year was not fixed at the same rate in every city, town, township and district in said county or counties; and defendant, upon its information and belief, avers that said tax was levied by said State board without authority of law, and that the same was illegally placed upon said assessment rolls or books and delinquent lists, because, as defendant avers, the State board of equalization has not apportioned said alleged assessment of the franchise, etc., to said cities, towns, town-

ships and districts, as required by section 10 of article XIII of the constitution of California; and defendant avers that upon the assessment-rolls and delinquent lists of said counties the said several taxes, State, county, city and county, city, town, township
267 and district, are blended and cannot be separated; and the defendant avers that its said railroad, in passing through each and every one of the counties, and cities and counties, hereinbefore referred to, passes through cities, towns, townships and districts thereof.

II.

In the third line of the 18th paragraph of defendant's affirmative defenses, the defendant hereby changes the word "assessor" to the word "auditor."

H. S. BROWN AND
FOSHAY WALKER,
Attorneys for Defendant, Central Pacific Railroad Company.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

E. H. Miller, Jr., being duly sworn, deposes and says: That he is the secretary of The Central Pacific Railroad Company, defendant in the above-entitled action; that he has read the foregoing amendment of answer, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters, that he believes it to be true.

E. H. MILLER, JR.

Subscribed and sworn to before me, this 10th day of November, 1892.

E. B. RYAN,
[NOTARIAL SEAL.] *Notary Public.*

268 *Second Amendments to Answer.*

On the 11th day of January, 1893, during the trial of this action, defendant duly served and filed by consent of plaintiff and leave of court first duly had and obtained its amendments to its answer herein, as follows:

(Plaintiff in open court at the time expressly waiving verification thereof.)

(Title of Court and Cause.)

Comes now the above-named defendant, and, by leave of court first had and obtained, files the following amendments to its answer herein.

I.

Paragraph IX of the affirmative defences of said answer is amended by adding thereto the following words, to wit: That on

the 4th day of April, 1864, the legislature of the State of California, passed an act entitled:

"An act to aid in the construction of the Central Pacific railroad, and to secure the use of the same to this State for military and other purposes, and other matters relating thereto," which said act is published in the Statutes of the State of California of the Session of 1863–'4 at page 344 thereof, to which said act defendant here refers by title and makes the same part of this answer.

II.

Paragraph XII of the affirmative defenses of said answer is amended by adding thereto the following words, to wit:

269 That said consolidation of said Central Pacific Railroad Company of California and said Western Pacific Railroad Company was thereafter recognized and confirmed by an act of the Congress of the United States, passed on the 7th day of May, 1878, entitled, "An act to alter and amend the act entitled, 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes,'" approved July first, eighteen hundred and sixty-two, and also to alter and amend the act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first-named act, which said act is published in volume 20 of the U. S. Statutes at Large, at page 56 thereof, to which said act defendant hereby refers, and makes a part of this its answer.

III.

Paragraph XII of the affirmative defenses of said answer is amended by striking from the first line thereof the words: "Acting under the said acts of Congress," and inserting in lieu thereof the words "Under and by virtue of the laws of the State of California, providing for the amalgamation and consolidation of railroad corporations."

H. S. BROWN AND
FOSHAY WALKER,
Attorneys for Defendant.

J. E. FOULDS, *Of Counsel.*

270 *Findings of Fact and Conclusions of Law.*

On the 3d day of February, 1893, the court made, signed and filed its written findings of fact and conclusions of law herein as follows:

(Title of Court and Cause.)

This action came on regularly on January 9, 1893, to be tried by the court, without a jury, a trial by jury having been duly waived; W. H. H. Hart, attorney general, Langhorne & Miller and A. R. Cotton, appearing as counsel for plaintiff, Messrs. J. E. Foulds and

Foshay Walker appearing as counsel for defendant. Whereupon proofs both oral and documentary were introduced by the parties, and the action fully tried, argued and submitted to the court for decision, and the court having considered the same, now makes its decision, and finds as follows:

I.

As to the first cause of action in the amended complaint the court finds, that all the allegations of said first cause of action are true, except as to counsel fees the court finds that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action is as to Langhorne & Miller a sum equal to 7½ per cent. on $109,440, principal of tax hereby found delinquent and unpaid, to wit: the sum of $8,208.00,
271 and as to A. R. Cotton, a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit, the sum of $2,736.00.

II.

As to the second cause of action in the amended complaint the court finds, that all the allegations of said second cause of action are true, except as to counsel fees the court finds that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $12,762.07, principal of tax hereby found delinquent and unpaid, to wit, the sum of $957.15, and as to A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit, the sum of $319.05.

III.

As to the third cause of action in the amended complaint the court finds that all the allegations of said third cause of action are true, except as to counsel fees the court finds that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $11,123.73, principal of tax hereby found delinquent and unpaid, to wit, the sum of $834.28, and as to
272 A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit, the sum of $278.09.

IV.

As to the fourth cause of action in the amended complaint, the court finds, that all the allegations of said fourth cause of action are true, except as to counsel fees the court finds that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum

equal to 7½ per cent. on $15,725.11, principal of tax hereby found delinquent and unpaid, to wit, the sum of $1,179.39, and as to A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit: the sum of $393.12.

V.

As to the fifth cause of action in the amended complaint the court finds, that all the allegations of said fifth cause of action are true, except as to counsel fees the court finds, that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $10,959.10, principal of tax hereby found delinquent and unpaid, to wit: the sum of $821.93, and as to
273 A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit: the sum of $273.98.

VI.

As to the sixth cause of action in the amended complaint the court finds that all the allegations of said sixth cause of action are true, except as to counsel fees the court finds that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $12,047.87, principal of tax hereby found delinquent and unpaid, to wit: the sum of $903.59, and as to A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit: the sum of $301.19.

VII.

As to the seventh cause of action in the amended complaint the court finds, that all the allegations of said seventh cause of action are true, except as to counsel fees the court finds, that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $35,033.21, principal of tax hereby found delinquent and unpaid, to wit: the sum of $2,627.49, and as to A. R. Cotton a sum equal to 2½ per cent. on said principal
274 sum of delinquent unpaid tax, to wit: the sum of $875.83.

VIII.

As to the eighth cause of action in the amended complaint the court finds, that all the allegations of said eighth cause of action are true, except as to counsel fees the court finds, that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum

equal to 7½ per cent. on $6,428.71, principal of tax hereby found delinquent and unpaid, to wit: the sum of $482.16, and as to A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit: the sum of $160.71.

IX.

As to the ninth cause of action in the amended complaint the court finds, that all the allegations of said ninth cause of action are true, except as to counsel fees the court finds that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $706.39, principal of tax hereby found delinquent and unpaid, to wit: the sum of $52.98, and as to
275 A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit: the sum of $17.65.

X.

As to the tenth cause of action in the amended complaint, the court finds that all the allegations of said tenth cause of action are true, except as to the counsel fees the court finds that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $8,306.78, principal of tax hereby found delinquent and unpaid, to wit: the sum of $623.01, and as to A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit: the sum of $207.66.

XI.

As to the eleventh cause of action in the amended complaint the court finds, that all the allegations of said eleventh cause of action are true, except as to counsel fees the court finds, that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $1,160.56, principal of tax hereby found delinquent and unpaid, to wit: the sum of $87.04, and as to
276 A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit: the sum of $29.01.

XII.

As to the twelfth cause of action in the amended complaint the court finds, that all the allegations of said twelfth cause of action are true, except as to counsel fees, the court finds that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $33,717.25, principal of tax hereby

found delinquent and unpaid, to wit: the sum of $2,528.79, and as to A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit: the sum of $842.93.

XIII.

As to the thirteenth cause of action in the amended complaint the court finds, that all the allegations of said thirteenth cause of action are true, except as to counsel fees the court finds, that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $1,125.22, principal of tax hereby found delinquent and unpaid, to wit: the sum of $84.39, and
277 as to A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit: the sum of $28.39.

XIV.

As to the fourteenth cause of action in the amended complaint the court finds, that all the allegations of said fourteenth cause of action are true, except as to counsel fees the court finds, that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $13,088.76, principal of tax hereby found delinquent and unpaid, to wit: the sum of $981.66, and as to A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit: the sum of $327.21.

XV.

As to the fifteenth cause of action in the amended complaint the court finds that all the allegations of said fifteenth cause of action are true, except as to counsel fees the court finds, that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $3,310.24, principal of tax hereby found delinquent and unpaid, to wit: the sum of $248.27,
278 and as to A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit: the sum of $82.75.

XVI.

As to the sixteenth cause of action in the amended complaint the court finds, that all the allegations of said sixteenth cause of action are true, except as to counsel fees the court finds, that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $1,481.03, principal of tax hereby found delinquent and unpaid, to wit: the sum of $111.08, and as

to A. R. Cotton a sum equal to 2½ per cent. of said principal sum of delinquent unpaid tax, to wit: the sum of $37.02.

XVII.

As to the seventeenth cause of action in the amended complaint the court finds, that all the allegations of said seventeenth cause of action are true, except as to counsel fees the court finds, that a reasonable compensation for legal servies rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $10,540.49, principal of tax hereby found delinquent and unpaid, to wit: the sum of
279 $790.53, and as to A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit: the sum of $263.51.

XVIII.

As to the eighteenth cause of action in the amended complaint, the court finds that all the allegations of said eighteenth cause of action are true, except as to counsel fees the court finds that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $3,370.18, principal of tax hereby found delinquent and unpaid, to wit, the sum of $252.76, and as to A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit, the sum of $84.25.

XIX.

As to the nineteenth cause of action in the amended complaint the court finds that all the allegations in said nineteenth cause of action are true, except as to counsel fees the court finds that a reasonable compensation for legal services rendered by plaintiff's counsel, Messrs. Langhorne & Miller and A. R. Cotton, in the institution and prosecution of said cause of action, is as to Langhorne & Miller a sum equal to 7½ per cent. on $5,414.01, principal of tax hereby found delinquent and unpaid, to wit. the sum of $406.05,
280 and as to A. R. Cotton a sum equal to 2½ per cent. on said principal sum of delinquent unpaid tax, to wit, the sum of $135.35.

As to the special further and affirmative amended answer of defendant the court finds:

XX.

That defendant is a corporation existing under the laws of the State of California, and as such has been for many years past and still is (except in the respects hereinafter stated), the owner of a line of railroad known as the Central Pacific railroad, extending from the Pacific ocean across the State of California and the State of

Nevada to Promontory, in the Territory of Utah. That the principal place of business of defendant now is, and for many years last past has been, in the city of San Francisco, State of California.

XXI.

That the total length of said railroad in said State of California, and the length thereof in the respective counties through which it passes, are as alleged in the amended complaint.

XXII.

That on the 20th day of June, 1861, a corporation was formed and organized under the laws of the State of California, under the corporate name of the Central Pacific Railroad Company of California. Said corporation was formed for the purpose of constructing, owning and operating a line of railroad and telegraph, commencing at the city of Sacramento, in said State, and running
281 thence through the counties of Sacramento, Sierra, Placer and Nevada, to the eastern boundary of said State.

XXIII.

That on the first day of July, 1862, the Congress of the United States passed an act entitled, "An act to aid in the construction of a railroad from the Missouri river to the Pacific ocean and to secure to the Government the use of the same for postal, military and other purposes." (United States Statutes at Large, vol. 12, page 489.) Said act is hereby referred to by its title and made a part hereof. By said act certain persons therein named were made and erected into a corporation, under the name and style of the Union Pacific Railway Company, and said corporation was authorized and empowered to construct, own and operate a line of railroad and telegraph from the Missouri river to the Pacific ocean. In and by said act said Central Pacific Railroad Company of California was given the same powers and clothed with the same privileges conferred by said act and given by it to said Union Pacific Railway Company, except that the said Central Pacific Railroad Company of California was to commence the construction of said railroad at the Pacific ocean and build east until it met said Union Pacific Railway Company building west.

XXIV.

That on or about the 2d day of July, 1864, said Congress
282 passed an act entitled, "An act to amend an act entitled, 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government of the United States the use of the same for postal, military and other purposes, approved May 1st, 1862.'" Said act is hereby referred to by title and by such reference made a part of this finding. (13 United States Statutes at Large, page 356.)

XXV.

That said Central Pacific Railroad Company of California accepted the provisions of said acts of Congress in a manner sufficient to satisfy the Government of the United States. That on the 4th day of April, 1864, the legislature of the State of California passed an act entitled "An act to aid in the construction of the Central Pacific railroad and to secure the use of the same in this State for military and other purposes, and to other matters relating thereto." (Statute of California, 1863–'4, page 344.) Said act is hereby referred to by its title and by such reference made a part hereof.

XXVI.

That on or about the 21st day of October, 1864, said Central Pacific Railroad Company of California sold and assigned all its rights in the aforesaid acts to a corporation created and then existing under the laws of the State of California, and known as the Western Pacific Railroad Company, so far as said rights related to the con-
283 struction of said railroad and telegraph between the cities of San José and Sacramento in said State of California; said assignment was ratified and confirmed by the United States by an act of Congress passed on the 3d day of March, 1865, entitled, "An act to amend an act entitled, 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean and to secure to the Government the use of the same for postal, military and other purposes, approved July 1st, 1862, and to amend an act amendatory thereof, approved July 2d, 1864.'" Said act is hereby referred to by title and by such reference made a part hereof. (13 United States Statutes at Large, page 504.)

XXVII.

That said line of railroad from said city of San José to Promontory in Utah Territory was completed and put in operation in 1869 and has been in operation from that time until the present and still is in operation, and the whole of the railroads mentioned in the said acts of Congress have long since been completed and are now operated as one continuous line from the Missouri river to the Pacific ocean and the corporations in charge thereof, including this defendant, have transported over said continuous line troops, munitions of war and postal matter and charged the United States Government for such transportation.

XXVIII.

That in August, 1870, under and by virtue of the laws of
284 the State of California providing for the amalgamation and consolidation of railroad corporations, said Central Pacific Railroad Company of California and the said Western Pacific Railroad Company consolidated under the name of the Central Pacific Railroad Company, which is defendant herein, and which has since the consolidation aforesaid, and until the present time, owned and

operated all of its said railroad in the State of California as a part of said continuous line of railroad from the Pacific ocean at San José, California, to the Missouri river; that said consolidation of said Central Pacific Railroad Company of California and said Western Pacific Railroad Company was thereafter ratified and confirmed by an act of Congress passed on the 7th of May, 1878, entitled, "An act to alter and amend the act entitled; 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes,'" approved July 1, 1862; and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act, which said act is published in volume 20, United States Statutes at Large, at page 56, and which said act is hereby referred to by its title and by such reference made a part hereof.

XXIX.

That under said acts of Congress of July 1, 1862, and July 2, 1864, there were loaned and issued by the United States to
285 said Central Pacific Railroad Company of California bonds at the rate of $16,000.00 per mile of said railroad from Sacramento easterly to the easterly line of the State of California. That said bonds were so loaned and issued prior to the adoption of the constitution of 1879 of said State of California, and were outstanding and unpaid at the time of the assessment which is sued on herein; that by virtue of said acts of Congress last mentioned the United States now has, and ever since the issue of said bonds has had, a lien upon the said railroad, its rolling stock, fixtures and franchises. That by said act of Congress of July 2, 1864, said Central Pacific Railroad Company of California was authorized to issue its bonds in an amount equal to said United States bonds and to secure the payment of the same by a mortgage upon its said road, telegraph, franchises and properties. That under the provisions of said act said bonds to the amount of $5,000 per mile of said railroad from Sacramento easterly to the easterly line of California, were issued before the 1st day of January, 1875, and the payment of the same was secured by a mortgage made by said Central Pacific Railroad Company to D. O. Mills and William E. Brown, executed July 25, 1865, upon the railroad of said company commencing at said city of Sacramento and running thence in an easterly direction through the counties of Sacramento, Sierra, Placer and Nevada to the eastern boundary line of the State of California, and included all of said line of railroad then completed and in process of
286 construction as well as all that portion of the same which might thereafter in whole or in part be constructed or completed, including therein the roadway and track, together with all the superstructures, depots, depot grounds, station-houses, watering places, workshops, machine shops, machinery, side tracks, turnouts, turn-tables, weighing scales, fixtures, locomotives, tenders, rolling stock, fuel, equipments and all other property which is usually and

ordinarily used in operating said railroad and all rights and privileges of way or transit, together with all the corporate rights, privileges and franchises of said company, which said mortgage was duly acknowledged for record and recorded August 24, 1865, in the office of the county recorder of Sacramento county in Book R of Mortgages, pages 456 to 464, and by said mortgage the said Central Pacific Railroad Company of California agreed and covenanted to and with the said D. O. Mills and William E. Brown and their successors in said trust, that said railroad company would pay all the ordinary and extraordinary taxes, assessments and other public burdens and charges which should or might be imposed upon the property therein described and thereby mortgaged, and that in default of such payment, the said Mills and the said Brown, or the survivor of them, or their successors in said trust under said mortgage, or any owner or holder of the bonds secured by said mortgage, might pay and discharge said taxes and assessments upon said property, and for all payments thus made the party making the
287 same should be allowed interest thereon at the rate of seven per cent. per annum, and such payments, with the interest thereon, should be and were secured by said mortgage to the party paying the same, and that the same should be payable by said company to the parties or party paying the same upon demand, and should be paid out of the proceeds of the sale of said property and franchises under said mortgage, in case of sale thereunder. Said bonds issued under the mortgage last mentioned were issued at the date of said mortgage, and were in existence, outstanding and unpaid at the time of making the assessment sued on herein, and all of said bonds issued under said acts of Congress and under said mortgage are not yet due and are outstanding and unpaid, and now are, and ever since their issuance have been, owned, some by citizens and *bona fide* residents of the State of California, and some by citizens of the United States *bona fide* residents of States other than California.

XXX.

That on the 13th day of August, 1887, the State board of equalization, of the State of California, did, for the purposes of taxation for the fiscal year 1887 assess as a unit, and not separately, the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then being and situate within the State, at the sum and value mentioned in the amended complaint, and did then and there enter said assessment upon its minutes, and in its record of assess-
288 ments. That such assessment is the one upon which the several taxes mentioned in the complaint herein are based, and no other assessment than the one aforesaid was ever made by said board of equalization or other assessor of said property of the defendant for said fiscal year. That said State board of equalization did at the time and in the manner alleged in the amended complaint apportion said assessment and transmit such assessment and the apportionment to the county and city and county auditors, and said assessment and the apportionment thereof were entered

upon the assessment-rolls of said counties and said cities and counties as alleged in said amended complaint, as hereinbefore found.

XXXI.

That the said board of equalization, in making said assessment, did assess the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, at their full cash value, without deducting therefrom the value of the mortgage, or any part thereof, or the value of said bonds issued under said acts of Congress, given and existing thereon, as aforesaid, to secure the indebtedness of said company to the holders of said bonds, and, in making said assessment, said board did not deem nor treat said mortgage or bonds as an interest in said property, but it assessed the whole value of said property as assessed to defendant in the same manner it would have done had there been no mortgage thereon. At the time said
289 assessment and apportionment were made as aforesaid by said State board of equalization the assessment books or rolls for the said fiscal year had been completed and were in existence, and the assessment and valuation of defendant's property for the purposes of taxation for said fiscal year had been ascertained and fixed as provided by law, and said board, in making said valuation and apportionment, did exercise all necessary powers relative to the equalization of values for the purposes of taxation.

XXXII.

That there were during the year 1887 railroads other than the railroad of this defendant, in the State of California, but not operated in more than one county, and that the above term "railroads" includes street railroads, tramways for mines and various manufacturing and improvement railways and steam roads.

XXXIII.

Said State board of equalization, in making said assessment of defendant's roadway, did not include in the valuation of said roadway the value of any fences erected upon the land of cotermin-us proprietors, and did not value said roadway at a greater value than the value of other property similarly situated and greater than its actual cash value, and did not blend in said assessment the value of any fences. That said board, in making its said assessment and valuation therefor, did not adopt a system of valuation,
290 which operated unequally, or which was intended to or which did in any manner violate the rule prescribed in section 10 of article 13 of the State constitution, and said board, in making its said assessment and valuation therefor, did not value the rolling stock of defendant at sixty (60) or any other per cent. above its actual value, and did not value nor assess defendant's franchise in excess of its actual value.

XXXIV.

That in making said assessment and valuation therefor said State board of equalization did not include the value of or assess any steamboats or boats, nor blend the value or assessment of any steamboats or boats, with the value of or assessment of defendant's roadway, rails, road-bed and rolling stock.

XXXV.

That in making its assessment and valuation therefor of defendant's franchise said State board of equalization did not include, assess or value any franchise or corporate power held or exercised by defendant under the acts of Congress hereinbefore mentioned, or under any act of Congress whatever. And said board, in making said assessment and valuation therefor, upon defendant's franchise, road-bed, roadway, rails and rolling stock, for purposes of taxation for the fiscal year 1887, did not include in its said assessment and valuation therefor any Federal franchise, then possessed by
291 defendant, nor any franchise or thing whatsoever, which said board could not legally include in such assessment or valuation. That the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad were valued and assessed by said State board of equalization, for purposes of taxation for the fiscal year 1887, at their actual value, and in proportion to their values respectively.

XXXVI.

In the counties of Alameda, Butte, San Joaquin, Santa Clara, Shasta, Siskiyou, Stanislaus and Yuba, the tax levied by the boards of supervisors thereof respectively for the fiscal year 1887 was not fixed at the same rate in every city, town, township and district in said county or counties respectively, and that wherever there was in any of said counties in which defendant's railroad ran any city, town, township, school, road or lesser taxing district, through which defendant's railroad ran, in said fiscal year, the board of supervisors of such county on the first Monday in October, 1887, did make and cause to be entered in the proper record book an order stating and declaring the length of main track of defendant's railway assessed by said State board of equalization, within the county, and the assessed value per mile of such railway, the number of miles of track, and the assessed value of such railway, lying in each city, town, township, school, and road district, or lesser taxing district,
292 in the county respectively through which defendant's railway ran, as fixed by the State board of equalization; and the several taxes, State, county, city and county, city, town, township and district for the fiscal year 1887 are not blended so that the same cannot be separated; and that defendant's railroad in passing through the counties mentioned in this paragraph did pass through cities, towns, townships and districts thereof.

XXXVII.

That as to all allegations of facts contained in defendant's amended answer, which are not herein found upon, there was no evidence or proofs introduced in support thereof.

And as conclusions of law:

The court decides that plaintiff is entitled to have and recover judgment against defendant, for the several principal sums of State and county taxes, hereinbefore found to be delinquent and unpaid, also to recover interest upon the said principal sums of delinquent State and county taxes, from the 27th day of December, 1887, at the rate of seven per cent. per annum, up to the date of entry of judgment herein; also to recover five per cent. penalty upon the principal sums of said delinquent State and county taxes; also to recover as and for counsel fees for legal services rendered it herein by Langhorne & Miller a sum equal to 7½ per cent. upon the principal sums of delinquent State and county taxes, and for legal services rendered it herein by A. R. Cotton a sum equal to 2½ per cent.
293 upon the principal sums of said delinquent State and county taxes; also its costs of suit herein.

And the court finds and decides that the total amount of said delinquent State and county taxes, together with the five per cent. penalty and interest thereon, as aforesaid, amounts at date hereof to the sum of $416,107.16, and that the total amount of said counsel fees earned by said Langhorne & Miller, calculated and allowed as aforesaid, is the sum of $22,180.56, and that the total amount *for* said counsel fees earned by said A. R. Cotton, calculated and allowed as aforesaid, is the sum of $7,393.51.

Plaintiff is also entitled to recover of defendant its costs herein incurred and expended.

Let a judgment be entered accordingly.

Dated February 3d, 1893.

J. C. B. HEBBARD, *Judge.*

Judgment.

And afterwards on the 3d day of February, 1893, judgment was rendered and entered herein as follows:

(Title of Court and Cause.)

This cause came on regularly for trial, W. H. H. Hart, attorney general, Langhorne & Miller and A. R. Cotton appearing as counsel for plaintiff, and J. E. Foulds and Foshay Walker appearing as
294 counsel for defendant. A trial by jury having been duly waived, the cause was tried before the court sitting without a jury, whereupon witnesses on the part of the plaintiff and defendant were duly sworn and examined, and documentary proofs introduced; the evidence being closed the cause was submitted to the court for consideration and decision, and after due deliberation thereon the court delivers its finding and decision in writing, which is filed, and orders that judgment be entered in accordance there-

with. Wherefore, by reason of the law and the finding aforesaid, it is ordered, adjudged and decreed, that plaintiff, The People of the State of California, do have and recover of and from defendant, Central Pacific Railroad Company (a corpor-tion), the sum of $295,740.71, together with interest thereon from the 27th day of December, 1887, at the rate of seven per cent. per annum, to date hereof, amounting to $105,579.42, together with five per cent. upon said principal sum of $295,740.71, amounting to the sum of $14,786.95, also that plaintiff have and recover hereby from said defendant the sum of $22,180.56, as and for the counsel fee earned by Langhorne & Miller, as attorneys for plaintiff herein, and also the further sum of $7,393.51, as and for the counsel fee earned by A. R. Cotton, attorney for plaintiff herein; also for and with interest at the rate of seven per cent. per annum from the date hereof until paid, on all of said several sums, together with said plaintiff's cost and disbursements, incurred in this action, amounting to the sum of $42.16.

Recorded Book 20, page 55, February 3d, 1893.

295 *Statement on Motion for New Trial.*

On the 19th day of June, 1893, defendant duly filed its approved, allowed and settled statement on motion for new trial herein as follows:

(Title of Court and Cause.)

The above-entitled action came on regularly to be tried by the court, without a jury, on January 9th, 1893, W. H. H. Hart, attorney general, Langhorne & Miller and A. R. Cotton appearing as counsel for plaintiff, and J. E. Foulds and Foshay Walker appearing as counsel for defendant; whereupon the following proceedings, and none other, were had:

W. W. DOUGLAS was called and sworn on behalf of plaintiff and testified that he is, and, since the 8th day of January, 1891, has been, the deputy comptroller of State.

The witness produced and identified, at the request of counsel for plaintiff, the duplicate record of assessments of railways by the State board of equalization for the year 1887, as an original record produced by him from the office of the comptroller of state of the State of California, which said duplicate record was duly certified by the chairman and clerk of said State board of equalization, which said duplicate record was also duly certified by the controller of State as having been received by him from said board of equalization and filed in his office, October 11th, 1887. Said duplicate record
296 and certificates being attached together in book form. For identification, said book was marked "Plaintiff's Exhibit 1."

Counsel for plaintiff offered in evidence all that portion of Plaintiff's Exhibit 1 relating to the assessment of the property of the defendant for the year 1887, together with said certificates.

Objected to by defendant as incompetent, irrelevant and imma-

terial; that said assessment is not in accordance with the requirements of the constitution, because the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad are assessed as a unit and not separately, and said assessment does not contain any of the matters and things required by section 3670 of the Political Code to make it *prima facie* evidence in this case.

The objection was overruled by the court, to which ruling defendant then and there duly excepted.

Said portion of said Exhibit 1, so admitted in evidence, is as follows: except said certificates, which were in all respects sufficient, and in due form, and are here omitted by consent.

EXHIBIT 1.

Record of Assessments of Railways by the State Board of Equalization for 1887.

The State board of equalization, being in session on this, the thirteenth day of August, 1887, all the members being present, and having under consideration the assessment of the franchise,
297 roadway, road-bed, rails, and rolling stock of the Central Pacific Railroad Company, within the State, for the year 1887, and it appearing to this board that said company, on the first Monday in March, in the year 1887, at 12 o'cloek, meridian, of that day, owned and still owns 719.50 miles of railroad within this State, which at said time and day in March was, and still is, operated in more than one county; being the entire railway of said company within this State, and which, with the right of way for the same, is described as follows:

Line of roadway, road-bed and rails, and right of way for the same.

Beginning at south line of block 408, North Potrero survey, running thence northerly through blocks 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 47, 45, 44, and 43 to Channel street; thence to King street;

Also, beginning on southerly line of South beach and water lot block 20; thence northerly through blocks 20 and 15 to Fourth street; thence across the street northeasterly through 100-vara lots 165 and 159 to King street, connecting with the first-described track; thence northerly, on King street, to South beach and water lot block 9 to ferry slip of freight-boats; also, spur track from said block 9 to Pacific Mail Steamship Company's wharf, with right of way, other than on public streets, sixty feet wide, being a distance of 2.46 miles in the city and county of San Francisco;

298 Also, beginning at end of Long wharf, in Alameda county, and running easterly to the mole; thence easterly through Seventh street, Oakland, to terminus of local line of the Central Pacific Railroad Company;

Again, beginning at the intersection of Harrison and Seventh streets, Oakland; thence running southerly along Harrison to First street; thence across First street and the railroad bridge to south

line of San Antonio estuary; thence southerly to Railroad avenue, in town of Alameda, near Mastic station;

Again, running the full length of Railroad avenue, through town of Alameda, to Melrose; also, small spur track, running from Alameda spur to main track, known as the Fruit Vale switch;

Also, beginning at west end of mole, West Oakland, running thence easterly to west line of Oakland point; thence continuing easterly to First street, Oakland; thence along said street to west line of San Antonio estuary; thence across said estuary, in a general easterly direction, to its intersection with the easterly end of said local line; thence easterly to Melrose; thence continuing on same course, through San Leandro, Haywards and Decoto, to Niles; thence easterly and northeasterly to town of Pleasanton; thence through Livermore pass and Midway station to the west line of San Joaquin county;

Again, beginning at Niles, and running in a southerly di-
299 rection through Washington corners, to the northerly line of Santa Clara county, making a distance of 83.52 miles in Alameda county; thence southerly in Santa Clara to the depot in the city of San José, a distance of 8.50 miles in Santa Clara county;

Again, beginning at a point on west line of San Joaquin county, 200 yards east of Midway station, thence running easterly to Bantas; thence northeasterly to San Joaquin river; thence to Lathrop; thence due north through the city of Stockton and Lodi to a point on the bridge across Dry creek, one mile south of town of Galt, which point is the north line of San Joaquin county, a distance of 45.75 miles in San Joaquin county; thence crossing Dry creek into Sacramento county, and thence running northwesterly through Galt, Elk Grove and Florin, to the intersection of the Sacramento and Placerville railroad at Brighton station; thence continuing same course to junction at Tivoli gardens; also a spur track running from foot of K street, on Front street, Sacramento city, to main depot in city; thence easterly to corner of B and Seventh streets, in said city; thence easterly along B street and levee to intersection of main line at a point known as Tivoli gardens; thence across the American river, and running northeasterly to a point on south line of Placer county, in southwest quarter of northwest quarter of section 15, township 10 north, range 6 east, a distance of 41 miles in Sacramento county; thence into Placer county, and thence
300 running in a general northeasterly direction through Roseville, Rocklin, Pino or Loomis, Penryn, Newcastle, Auburn, Colfax, Dutch Flat to south line of Nevada county, where it intersects the north line of northeast quarter of northeast quarter of section 28, township 17 north, range 12 east; thence in Nevada county, and easterly and northerly to the southeast corner of southwest quarter of southwest quarter of section 19, range 13 east, into Placer county, and thence running easterly to southeast corner of southwest quarter of section 20, range 14 east; thence into Nevada county, and running easterly to southeast corner of said section; thence to southeast corner of southeast *corner* of southwest quarter of section 24, range 14 east; thence into Placer county, and running south-

easterly to the center of northeast quarter of northwest quarter of section 30 north, range 16 east; thence northeasterly to northeast corner of northwest quarter of section 20 north, range 16 east; thence to intersection of Nevada county line with southeast corner of southwest quarter of southeast quarter of section 17, township 17 north, range 16 east; thence into Nevada county, and thence northeasterly to intersection of south line of Sierra county, the ranges being of township 17 north; thence northeasterly to a point on the east line of Sierra county, making a distance of 2.15 miles in Sierra county, 30.25 miles in Nevada county, and 92.25 miles in Placer county.

Again, beginning at the depot at Roseville, in Placer
301 county, near the east line of section 2, township 10 north, range 6 east, and thence running northerly through the towns of Lincoln and Sheridan to a point where the center of Bear River railroad bridge intersects the south line of Yuba county, a distance of 20.50 miles in Placer county; thence into Yuba county, and running northwesterly through the town of Wheatland, and across the Yuba river to depot in city of Marysville; thence northwesterly through Marysville to the center of railroad bridge across Feather river, which point is on northerly line of Yuba county, a distance of 15.87 miles in Yuba county; thence into Sutter county, and thence running to a point near the northeast corner of section 30, township 17 north, range 3 east, on north line of Sutter county, a distance of 10 miles in Sutter county; thence into Butte county, and thence running northwesterly through Gridley, Biggs and Durham, to depot in town of Chico; thence westerly to town of Nord; thence northwesterly, through Anita and Cana, to a point near the southwest corner of section 31, township 24 north, range 1 west, on the north line of Butte county, making a distance of 45 miles in Butte county; thence into Tehama county, and running north and by west, through Vina, Tehama and Red Bluff, to a point at the southeast corner of northeast quarter of section 16, township 28 north, range 4 west; thence north and easterly to the center of channel of Cottonwood creek, in southwest quarter of section 10, township 29 north, range 4 west, being the north
302 line of Tehama county, a distance of 40.54 miles in Tehama county; thence into Shasta county, and running thence northeasterly to a point in section 1, said township and range; thence northwesterly to town of Redding; thence running northerly through townships 32, 33, 34, 35 north, range 5 west to town of Delta; thence on through township 36 north to a point on north line of section 2 of said township; thence across sections 35, 36, 25 and 24, township 37 north, range 5 west; thence northeasterly across township 38 north, range 4 west; thence northerly to a point near the north line of southeast quarter of northeast quarter of section 2, of said range and township, on the north line of Shasta county, a distance of $82\frac{8}{10}$ miles in Shasta county; thence into Siskiyou county, and thence running northerly in township 39 north, and northwesterly across township 40 north, range 4 west; thence across section 1, township 40, range 5 west; thence northwesterly across

townships 41 and 42 north, range 5 west, across the northeast part of township 42, and northerly through townships 43 and 44 north, range 6 west, and thence to town of Montague, in section 27, township 45 north, range 6 west, a distance of 55.54 miles in Siskiyou county;

Again, beginning at a point near the depot in Lathrop, in San Joaquin county, at junction with main line of the Central Pacific railroad, running southeasterly through Morano and Ripon to center of railroad bridge across the Stanislaus river, in township 2 south, range 8 east, being the south line of said county, making a
303 distance of 11 miles in San Joaquin county; thence into Stanislaus county, and running thence southeasterly, in a direct line, through Salida, Modesto and Turlock, to a point where the northwest line of Merced county intersects the east line of the southwest quarter of section 23, township 5 south, range 10 east, a distance of 22.63 miles in Stanislaus county; thence into Merced county, and running thence southeasterly, in a direct line, to Cressy; thence southeasterly by south, through Atwater to Merced; thence southeasterly to a point on northwest line of Fresno county, where said line intersects the southwest corner of section 13, township 9 south, range 15 east, a distance of 36.75 miles in Merced county; thence into Fresno county, and running thence southeasterly through Minturn, Berenda, Borden, Fresno and Fowler's, to a point in the center of the northeast quarter of northeast quarter of northeast quarter of section 35, township 16 south, range 22 east, a distance of 60.13 miles in Fresno county; thence into Tulare county, and thence running southerly to the town of Goshen, a distance of 13.58 miles in Tulare county.

The townships and ranges are of Mount Diablo base and meridian; the right of way, except in the counties of Placer and Nevada, and on public thoroughfares, is 100 feet wide, and on the main line in Placer county to Nevada county, and in Nevada county, the right of way is 200 feet wide; from Roseville, in Placer county, to Yuba county the right of way is 100 feet wide.

304 And it appearing that the actual value of the franchise, roadway, road-bed, rails and rolling stock of said company, within this State, at the said date and time in March, was, and still is, the sum of eighteen million dollars;

Therefore, it is hereby ordered that the said franchise, roadway, road-bed, rails and rolling stock, for the year 1887, be and the same are hereby assessed to the said Central Pacific Railroad Company at the sum of eighteen million dollars.

C. E. WILCOXEN, *Chairman.*
E. W. MASLIN, *Clerk.*

At the request of counsel for plaintiff the witness then produced and identified a book as the duplicate record of apportionment of railway assessments from the office of the comptroller of state of the State of California for the year 1887, which was marked for identification as "Plaintiff's Exhibit 2," which said duplicate record was duly certified by the chairman and clerk of said State board of equalization, and was also duly certified by the controller of state as

having been received by him from said board of equalization and filed in his office on October 11th, 1887, said duplicate record and certificates being attached together in book form and constituting said Exhibit 2.

Counsel for plaintiff then offered in evidence all that portion of Plaintiff's Exhibit 2 having reference to the apportionment of the assessment of the property of defendant for the year 1887, together with said certificates. Said portion of said duplicate record so offered was as follows, except said certificates, which were in all respects sufficient and in due form, and are here omitted by consent.

305

Duplicate Record of Apportionment of Railway Assessments for 1887.

OFFICE OF STATE BOARD OF EQUALIZATION,
SACRAMENTO, *August 22nd*, 1887.

The State board of equalization met this day. All the members present. The board this day apportioned the total assessment of the franchise, roadway, road-bed, rails and rolling stock of each railroad assessed by it on the 13th day of August, 1887, for the year 1887, to the counties and the city and county of San Francisco in proportion to the number of miles of railway laid in each county, and in the city and county of San Francisco, which apportionment is set out in the following table.

The apportionment is based upon the proportion the number of miles in each county of a railway bears to the total number of miles of such railway laid in the State.

Witness our hands.

E. W. MASLIN,
Clerk of the State Board of Equalization.
C. E. WILCOXEN,
Chairman State Board of Equalization.

306 *Duplicate Record of Apportionment*

Name of the corporation or person to whom each railway is assessed.	Name of each railway assessed by the State board of equalization.	Name of the county and city and county to which the assessment of each railway is apportioned by the board.	Number of miles of railway operated in the State.	Number of miles of each railway in each county and city and county.	Total value per mile of each railway.	Total assessment of the franchise, roadway, road bed, rails, and rolling stock of each railway assessed for purposes of State taxation.
Central Pacific Railroad Company.	Central Pacific...	.....	719.50	.....	$25,017 37	$18,000,000
		Alameda	.....	83.52	....	.....
		Butte.....	.....	45	.....	.....
		Fresno.....	.....	60.13	.....	.....
		Merced.....	.....	36.75	.....	.....
		Nevada.....	.....	30.25	.....	.....
		Placer.....	.....	112.75	.....	.....
		Sacramento.....	.....	41	....	.....
		San Francisco.....	.....	2.46	.....	.....
		San Joaquin.....	.....	56.75	.....	.....
		Santa Clara.....	.....	8.50	.....	.....
		Shasta.....	.....	82.08	.....	.....
		Sierra.....	.....	2.15	.....	.....
		Siskiyou.....	.....	55.54	.....	.....
		Stanislaus.....	.....	22.63	.....	.....
		Sutter	.....	10.00	.....	.....
		Tehama	.....	40.54	.....	.....
		Tulare.....	.....	13.58	.....	.....
		Yuba.....	.....	15.87	.....	.....

of Railway Assessments for 1887. 307

Amount of the assessment of each railway apportioned by the board to each county and city and county for purposes of county and city and county taxation.	Rate of taxation for each county and city and county levied by the board of supervisors.	Amount due of State taxes upon the whole assessment by each corporation or person assessed for railway. State rate : $0.60.8 on each $100.00.	Amount due of county and city and county taxes upon the assessment apportioned to each county and city and county by each corporation or person assessed for railway.	Remarks.
.....	.....	† $5,472 109,440 00		
			† $638 10	
$2,089,451 00	$ 39.2 69.2	.....	12,762 07	$565,643 @ 39.2 and $1,523,808 @ .69.2.
			† 556 19	
1,125,782 00	64 99 2	.....	11,123 73	$12,509 @ .64 and $1,113,273 @ .99.2.
			† 786 26	
1,504,295 00	85.2 1 05.2	.....	15,725 11	$50,035 @ .85.2 and $1,451,260 @ 1.05.2.
			† 547 96	
919,388 00	1 19.2	.....	10,959 10	
			† 602 39	
756,776 00	1 59.2	.....	12,047 87	
			† 1,751 66	
2,820,709 00	1 24.2	.....	35,033 21	
			† 321 44	
1,025,712 00	39.2 64.2	.....	6,428 71	$62,544 @ .39.2 and $963,168 @ .64.2.
			† 35 32	
61,543 00	1 14.78	.....	706 39	
			† 415 34	
1,419,736 00	39.2 59.2	.....	8,306 78	$49,034 @ .39.2 and $1,370,702 @ .59.2.
			† 58 03	
212,648 00	29.2 59.2	.....	1,160 56	$32,773 @ .29 2 and $179,875 @ .59.2.
			† 1,685 86	
2,053,426 00	1 64.2	.....	33,717 25	
			† 56 26	
53,787 00	2 09.2	.....	1,125 22	
			† 654 44	
1,389,465 00	94.2	.....	13.088 76	
			† 165 51	
566,143 00	48.2 59.2	.....	3,310 24	$37,526 @ .48.2 and $528,617 @ .59.2.
			† 74 05	
250,174 00	59.2	.....	1,481 03	
			† 527 02	
1,014,264 00	93.2 1 04.2	.....	10,540 49	$25,017 @ .93.2 and $989,187 @ 1.04.2.
			† 168 50	
339,736 00	99.2	.....	3,370 18	
			† 270 70	
397,025 00	1 19.2 1 39.2	.....	5,414 01	$56,289 @ 1.19.2 and $340,736 @ 1.39.2.
			† 186,300 71	† 295,740.71 & 14,787.03 5 %.

NOTE.—The figures in the foregoing exhibit marked with a † are interlined upon the original record in lead pencil at the places above shown.

308 Said Exhibit 2 contained the duplicate record of the apportionment of the assessments for 1887 of all the railways in the State operated in more than one county, and in the last column under heading "Remarks" the State and county and city and county taxes were stamped in ink as paid as to many of the railroads, but the State and county and city and county taxes therein alleged to be due by this defendant had not been in any manner marked paid anywhere on said Exhibit 2.

Mr. HART (to counsel for defendants): Do you make any question as to the apportionment of the different mileages to the different counties?

Mr. FOULDS: I think so far as the mileages to the counties are concerned that we have no objection.

Mr. LANGHORNE: Or the apportionment to them?

Mr. FOULDS: No, sir.

Mr. HART: You admit the allegations in the complaint as to the apportionment to the counties?

Mr. FOULDS: We do not complain of that. Now, in making that admission, I do not want to be understood as consenting to the constitutionality of the statute providing for apportionments. The figures probably state the correct mileage for each county. We admit that this apportionment is made as the Political Code requires it to be made, and the mileage to each county is correctly stated. That is all that you wish us to admit?

309 Counsel for defendant objected to the introduction of said record, upon the ground that the evidence is incompetent, irrelevant and immaterial; that the apportionment, as shown by this record, is not in accordance with the provisions of section 10, article XIII, of the constitution of the State of California, in this, that upon the face of the record it appears that there is no apportionment to any subdivisions of counties, nor does the record show that there are any unpaid taxes due from the defendant; that the record is inadmissible for any purpose, because it is based upon a system which has been declared by the supreme court of this State to be special legislation for the collection of railroad taxes, and therefore unconstitutional and void.

The objections were overruled by the court, to which ruling defendant then and there duly excepted. Said duplicate record of apportionment of railway assessments and said certificates were admitted and read in evidence.

By Mr. LANGHORNE:

Q. Have any of the taxes assessed against the Central Pacific Railroad Company, mentioned in the duplicate records produced by you from the State comptroller's office, been paid?

To this question defendant's counsel objected, on the ground that the record is the only evidence under the statute that can be received of the payment of taxes or of the non-payment of them, and that oral testimony thereon is incompetent.

310 The objection was overruled by the court, to which ruling defendant then and there duly excepted.

A. No, sir; the taxes have not been paid.

Q. Or any portion of the taxes, or the interest, or the penalty?

To this question defendant's counsel objected upon the same grounds as stated in the last objection.

The objection was overruled by the court, to which ruling defendant then and there duly excepted.

A. No, sir.

Counsel for plaintiff announced to the court that they would proceed to offer evidence as to the value of counsel fees, under the provisions of section 3670 of the Political Code of the State of California.

Counsel for defendant objected to the introduction of any evidence upon the subject of counsel fees as incompetent, irrelevant and immaterial, which objection was overruled by the court, and to which ruling defendant then and there duly excepted.

And, by stipulation, it was understood that all evidence on the subject of counsel fees was taken subject to the foregoing objection and exception.

It was further stipulated that such testimony should be considered as applicable to the six cases of like character, pending before this court, to wit: the case at bar; The People of the

311 State of California *vs.* Southern Pacific Railroad Company, No. 28425, involving a claim for the principal sum of $251,134.26; The People of the State of California *vs.* Northern Railway Company, No. 28426, involving a claim for the principal sum of $41,483.45; The People of the State of California *vs.* The San Pablo and Tulare Railroad Company and Southern Pacific Railroad Company, No. 28427, involving a claim for the principal sum of $11,886.85; The People of the State of California *vs.* California Pacific Railroad Company, No. 28428, involving a claim for the principal sum of $37,015.45; and The People of the State of California *vs.* South Pacific Coast Railway Company, No. 28429, involving a claim for the principal sum of $10,178.48.

J. P. LANGHORNE was called and sworn as a witness for plaintiff.

By Mr. MILLER:

Q. Mr. Langhorne, were you employed as one of the special counsel for the State in the prosecution of these tax suits against the various railroads that are on trial now?

A. Yes, sir; the firm of Langhorne & Miller was employed by the State controller, at the time these suits were first commenced, to institute these six actions. I understand this testimony is applicable to all six cases.

By Mr. MILLER:

Q. Now, will you please go on and tell me if Langhorne & Miller took charge of the cases and what they did in the prosecution of them from that time up to the present?

A. They were placed in our charge for the purposes of
312 prosecution some time in January, 1890. On January 28, 1890, the original complaints were filed in each one of these cases. As there was then pending, upon appeal, in the supreme court of this State, cases involving taxation of the same roads for the year 1886, nothing was done until the decision of the supreme court in those cases. I refer to the decision of the supreme court in the case of People *vs.* Central Pacific Railroad Company in 83 California Reports. I was then called to Sacramento by the attorney general and had a consultation with him and the then comptroller, and, under his instructions, drew the amended complaints which are now filed in these six cases. The preparation of these amended complaints was extremely arduous for the reason that the supreme court seemed to require something that had not been required before in its cases, namely, an allegation in regard to every fact that had been done in regard to the assessment and levy of the taxes and delinquency, and these allegations had to be repeated in regard to each cause of action, and a separate cause of action stated in regard to each county through which the railroad of any one of these defendants ran. And we would accumulate the evidence, not only of the acts of the different boards and officers, but we had also to get a description of the road in the whole State, and that in each of the counties. That was done in each of the cases, and the cases came up on demurrer to the amended complaint before the late
Judge Hoge. The demurrer interposed by the defendants
313 against us, which is of record, raised a great many questions of law, not only in regard to the provisions of our State constitution and the State statute, but also in regard to the alleged violation of the fourteenth amendment to the Federal Constitution. I prepared myself in regard to all of these matters and prepared a brief. During all this time we were in consultation with the then Attorney General Johnson, and, subsequently, with the present Attorney General Hart, to whom we made full reports. I also participated in the oral arguments of these demurrers, and after they were disposed of I prepared the cases for trial. At that time the demurrers came on before Judge Hebbard, after Judge Hoge's death. Mr. Cotton also came in and filed a brief for the attorney general and participated in that matter, and I prepared the cases for the trial which is now going on.

Q. About how many times were you at Sacramento?

A. I have been in Sacramento, I suppose, altogether, a half dozen times. I cannot tell how many; perhaps a half dozen or ten times, in connection with the evidence in the cases and preparing the cases for trial and going over the records and so on.

Q. What did you do in Sacramento in regard to the cases?

A. I examined the records of the comptroller's office and State

board of equalization in regard to the evidence, and also I had several consultations with Mr. Dunn, who was the former comp-
314 troller, and an important witness in the matter, as to the proceedings before the State board of equalization. I will say that, in addition to these services, and the services on this trial, are the services upon the preparation of findings in the case or of any bill of exceptions on appeal that will have to be rendered in this case before its final determination.

Q. What did you do with regard to the matter of preparing these cases for trial?

A. Well, as I stated, I have looked up questions of law involved, which cover a variety of questions, all of which, or a good many of which, have been already argued before this court. Of course, there are certain questions of fact which have been raised on this trial which have not come before this court as yet. I will state that I was particularly careful in the preparation of the cases, and devoted special attention on account of the fact that prior cases seem to have been disposed of—that is, the cases prior to 1886—in the United States circuit court, upon certain findings, which were claimed by certain officers of the State not to have been correct.

Q. Did you examine all the records in the circuit court of the United States where those cases were?

A. I did. I examined all the records in the courts of the United States that were presented in the prior cases in regard to all the questions, because all of these questions had a bearing upon these cases.

315 Q. To what extent did you look up the law involved in these cases?

A. Well, I cannot state now exactly the exact amount of time that I took, nor the exact number of books, but I think I can state that I went over all the decisions I could find in the digest—all I could find in regard to them which I thought had a bearing upon them.

By Attorney General HART:

Q. How many times have briefs been filed, Mr. Langhorne, in this case, by counsel for the people?

A. I think there have been about four briefs filed altogether.

Q. How many have you filed?

A. I have filed one brief upon the demurrer.

Q. Did you not file one before Judge Hoge?

A. Yes, sir.

Q. And also one before his honor?

A. Well, I supplemented my brief before Judge Hoge with the same one I filed before his honor here. It was the same question involved here.

Q. And the attorney general filed two briefs and Judge Cotton one?

A. Yes, sir.

Q. Well, what, in your judgment, is the percentage that should

be allowed as compensation in this case? What would be a reasonable compensation in this case?

By the COURT:

Q. First, what is the amount sought here by the plaintiff, in round numbers?

316 Mr. HART:

A. Well, there are six cases. The exact amount is $647,439.20 as the principal of the delinquent taxes.

Q. Now, I will ask you, Mr. Langhorne, considering that there are six cases, and the magnitude of the work that has been done in them, as you know of your own knowledge, the amount involved being $647,439.20, what would you say would be a reasonable compensation for attorneys' fees—counsel fees?

A. Well, I think, considering the amount of work I have performed and the amount involved, and the responsibility, that a reasonable amount would be at least ten per cent., which is the usual amount in tax cases, as I understand.

Q. And in that you include the compensation of all counsel and not for the attorney general—of course he has a salary?

A. Well, I am only testifying as to what our firm should get.

Q. I mean for the service of the attorney general.

A. Well, I could not testify as to that. I have only testified in regard to what our firm did. I have not testified as to what the attorney general did.

Q. Well, I want to make that distinction. I do not know that I am entitled to anything and I don't believe I am.

Cross-examination:

On cross-examination the witness testified as follows:

317 By Mr. FOULDS:

Q. Is your estimate of ten per cent. what you considered to be the reasonable value for services which your firm alone has performed in these tax cases?

A. Yes, sir. The former firm of Langhorne & Miller; though, in regard to these cases, our firm continues.

Q. Well, there are six cases, but they all practically involve about the same issue. The preparation of one case, say the Southern Pacific case, would practically be a preparation of the whole of them?

A. Not altogether. In the Southern Pacific case there are different acts of Congress and different questions.

Q. But all the six cases involve very much less labor than if they had been six cases involving different facts and principles of law?

A. Yes, sir.

Q. Now, on what theory do you base your determination that ten per cent. is a reasonable estimate for the firm of Langhorne & Miller?

A. I base it upon the amount of labor expended, the amount of responsibility upon the firm, the amount involved in the suits. I think the responsibility is measured by that and the importance of the cases.

Q. The responsibility is shared, to a considerable extent, by the attorney general, is it not?

A. Well, it is, of course, to a certain extent, yes, sir.

Q. To a very large extent?

318 A. But I think when he gives a case to private counsel that their responsibility is even greater or more than the attorney general's, because they have the direct handling of the case, and if anything goes wrong, why, he can lay it on them.

D. M. DELMAS, called and sworn as a witness for plaintiff, testified as follows:

By Attorney General HART:

Q. Mr. Delmas, you are a practising attorney-at-law, and have been for several years last past in San Francisco?

A. Yes, sir.

Q. You also had something to do with the tax cases of 1885 and 1886, did you not, so that you know something of railroad tax litigation?

A. I would not be certain as to the year. The first part of your question involves 1885 and 1886. As to the second part of your question, I can answer affirmatively I do.

By the COURT: I would suggest, gentlemen, that Mr. Delmas heard the statement of Mr. Langhorne as to what was involved in these cases.

A. I think so.

By Attorney General HART:

Q. The amount involved being in the six cases $647,439.20, now state to the court if you have an opinion as to what would be a reasonable attorney's fee to charge in these cases, the defendants having filed voluminous answers attacking the tax by virtue of the Federal franchise having been assessed, and also that dis-

319 crimination was used against the railroad in making the assessment; and those matters having been all examined into and some seven briefs having been filed in the case, and having been orally argued twice on the demurrer before the court, and now tried, can you state what would be a reasonable fee.

Mr. FOULDS: I understand that you include all the services that have been performed both by yourself, Mr. Cotton, Mr. Langhorne and Mr. Miller. Does your question go to the counsel fees of all?

Attorney General HART: Yes, sir; because I don't claim that the attorney general is entitled to any, but the other counsel are entitled to his fee because he has to take the responsibility.

A. You have asked me if I was familiar with this litigation—

that is, with the litigation that has been going on for ten years past. I am answering that question as to all the matters involved.

Q. Yes, in answer to what I have stated to you on the subject.

A. I understand that the fee in these cases is purely contingent?

Q. Yes, sir.

A. The State don't claim to be responsible unless the State wins, and the compensation for the service is not to be fixed until the final determination of the case?

Q. I believe that is correct.

A. Twenty-five per cent. of the amount involved would, in my judgment, be a reasonable fee.

320 Q. And when you say twenty-five per cent., do you mean of the principal, or after the interest and costs are added?

A. I mean the whole amount, including that; because whether interest is recoverable or not has been a very mooted question in these cases, and a very difficult one.

Cross-examination:

On cross-examination the witness testified as follows:

By Mr. FOULDS:

Q. Mr. Delmas, if this fee were not contingent, but were a fee based upon the value of the services rendered in these cases up to the present time?

A. I did not catch your question.

Q. Suppose this fee were not a contingent fee, but were a cash fee, to be fixed according to the value of the services rendered by these gentlemen in these cases up to the present time, what would be your judgment as to the compensation?

A. A cash fee?

Q. Yes, certainly.

A. I should judge about twenty-five thousand dollars would be a reasonable fee.

By Attorney General HART:

Q. For the six cases?

A. Well, all the questions involved in the six cases, the important questions, are kindred, as I understand it. The great questions involved being the questions arising under the fourteenth

321 amendment to the Federal Constitution, and the Federal franchise, and the correctness of the assessment and its legality, etc.

Q. There is also involved in this case the correctness of each levy made by the different counties through which the road passed?

A. I take that into consideration.

By Mr. FOULDS:

Q. Your estimate, dealing with this fee as a contingent fee, was based upon a consideration of the entire services of all the counsel for the plaintiff, The State of California, in these cases?

A. It was.

Q. Now, I understand that Mr. Langhorne was testifying as to the value of the services performed by his firm as special counsel. Now, limiting it to those services, the services of special counsel in the case, what would be your judgment as to a reasonable fee in the matter?

A. It is impossible for me to determine that, sir, because I assumed, in the fixing of the fee, the contingent fee, I had stated that the cases being conducted by competent counsel, of whom, of course, Mr. Langhorne and Mr. Miller formed part, that they co-operated with each other, and that they seek by their mutual co-operation to obtain a general result. I have no means, unless I could examine in detail the work performed by each counsel, of segregating and apportioning the fee. Briefs have been spoken of here. I have not seen those briefs, and I do not know how much ground they cover, or how much labor they have involved, or what questions they discuss.

322 AYLETT R. COTTON, called and sworn as a witness for plaintiff, testified as follows:

By Mr. LANGHORNE:

Q. Judge Cotton, you have rendered services in these six cases now before the court?

A. I have. I would say that soon after Attorney General Hart came into office he either wrote or telegraphed for me to go to Sacramento, and when I arrived there I found he wished to talk over this railroad-tax litigation, and we did talk the matter over there. He desired me to write a brief on the question generally, and I went to work looking up the legal propositions and the authorities, and wrote a manuscript brief generally on this question of taxation; but I have not the first brief that was filed, here, in my package of briefs, by the attorney general, but I think quite a portion of that, and I think a portion of you gentlemen's briefs, is embraced in this first brief in this case. In addition to what I wrote, the attorney general embraced, to a considerable extent, in his first brief, other matters. I find two of the briefs that were filed in this case were gotten up by me; one, filed before the Hon. J. P. Hoge, which is endorsed "W. H. Hart, attorney general, and A. R. Cotton, of counsel," and another filed by Judge Hebbard, which is undoubtedly supplemental, a reply brief of plaintiff on the demurrers to the complaint. My name was not printed to that brief by an oversight of the attorney general, but I wrote it afterwards on the brief, and I was
323 present at the argument and participated in the argument of the demurrers.

By Attorney General HART:

Q. And also on the trial?

A. And on the trial, yes, sir; Attorney General Hart spoke to me to take a hand generally in these railroad-tax suits at that time, in the early part of 1891, in the early part of his administration, and

ever since that time I have given the legal proposition a good deal of attention.

Q. Now, Judge Cotton, what, in your opinion, would be the reasonable value of the services?

A. Well, I have not thought. I had thought this in regard to the fees in these cases: You gentlemen, Messrs. Langhorne & Miller, had done a great deal of work before I came into the case, and a large part of the work since, and I thought that we would not disagree as to any division of it. I do not know whether his honor can make a separate finding of fees for different counsel in the case, and I have not thought of this question at all, as to what would be right so far as I am concerned. Of course, as Mr. Delmas says, these fees are contingent, and I expect to participate in any further work that needs to be done in the cases,—anything that has to be done in the future,—and I am willing to leave it to the court hereafter, or to the attorney general, as to what would be fair so far as I am concerned.

324 Q. What do you think that the fees of all the special counsel together would be,—a reasonable fee?

A. Well, I would prefer not expressing an opinion, as I am somewhat interested. You gentlemen have expressed your opinions.

Mr. LANGHORNE:

Q. I expressed an opinion of ten per cent., do you think that too low or too high?

A. Well, I should think ten per cent. was adequate.

Q. You mean for all the counsel? I mean ten per cent. for the services of Langhorne & Miller.

Mr. FOULDS: Do you include Judge Cotton in that?

Mr. LANGHORNE: No, sir; my estimate was only in regard to the services we had rendered.

The WITNESS: Well, I prefer leaving the amount of fees to his honor. Mr. Delmas has testified and you have testified. I would not like to undertake to fix a sum.

The COURT: Do I understand that your services were as special counsel, or in connection with the attorney general's office?

Attorney General HART: Special counsel.

A. Well, as special counsel. I am not a deputy or anything of that kind. I am entirely independent of his office.

Attorney General HART:

Q. Well, what do you think your fees were worth, Judge? Just mention that, what per cent.?

325 Mr. FOULDS: I don't know that that is a proper way to put the question.

Attorney General HART:

Q. What per cent. do you say, Judge, for your services for all the cases combined?

A. Two and a half per cent.

Mr. FOULDS:

Q. Suppose that you had performed the same labor and done the same things as you have done professionally in these cases for a private individual, who desired you to make out your bill to him, and intended to pay you in cash, what would you have charged him for the work you have done without any contingency, or anything of that kind, in it—simply for your services up to date?

Attorney General HART: That includes all of your services for the tax of 1887?

Mr. FOULDS: All of his services in these suits.

The COURT: Two and a half per cent. is about $16,000.

A. As an absolute cash payment, if a man wanted to pay me the cash now, and I agreed to attend to the cases until I was through?

Attorney General HART:

Q. My question is all services up to the end of the trial of these cases, up to the judgment in these cases.

A. Up to the end of the trial in these cases?

Q. All services that you have heretofore performed and all services that you will perform, until the court renders judgment in this case.

326 A. Well, an absolute cash fee—I would be satisfied with $5,000,—that is unconditoinally.

Q. Now, in your estimate of two and a half per cent., do you include all services you may have hereafter to render in case of an appeal to the Supreme Court or a writ of error to the Supreme Court of the United States in any case where these suits might be involved?

A. Yes, sir; I included all services.

Attorney General HART:

Q. Well, do you include a trip to Washington?

A. No, sir, I do not. I include, though, the preparation of the papers necessary for an appeal.

Q. Then your estimate of two and a half per cent. is very largely speculative as to what proceedings may be taken in these cases after his honor, here, renders judgment?

A. No, sir, it is not speculative, because it is largely hypothetical when this money may come in, or what may be the result of these suits, or when it may be paid.

Q. Well, the largest figure that you spoke of is estimated to some extent upon the possibility of such litigation in the future?

A. Well, on the uncertainties of when there will be any fee paid.

Mr. FOULDS: Well, I don't think that is an element.

Attorney General HART: It is only an element that is involved in railroad-tax cases.

327 Mr. FOULDS: The statute only authorizes the court to fix a reasonable fee for the services, and the services are only

such as the court can say have been necessary in these cases. It cannot go into any such problematical services.

Mr. LANGHORNE: The theory of settling counsel fees in any case is necessarily contingent, unless the counsel announce that they are not going to appeal, but are going to pay the judgment, and the court must proceed upon the theory that the defendant will resort to all legal expedients to avoid settling the matter.

By the WITNESS:

A. I understand that there is really no paymaster—no employer; it is purely contingent on a successful result against the railroad corporation.

Defendant's counsel here moved the court for a nonsuit, upon the ground that the plaintiff had wholly failed to make out any cause of action by the evidence introduced upon its behalf, the record evidence, which had been introduced, being based upon proceedings under statutes which the supreme court of this State had declared to be unconstitutional and void, hence must be insufficient to support any judgment in favor of the plaintiff.

The motion was denied by the court, to which ruling defendant then and there duly excepted.

By stipulation of counsel it was agreed that the allegations found at the end of the statement of the facts of each cause of action in the amended complaint, which were added thereto as amend-
328 ments during the progress of the trial, and are as follows:

"Before the fourth Monday of October, 1887, said controller did compute at the rate of taxation fixed and levied as aforesaid and enter in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums in dollars and cents, rejecting fractions of a cent to be paid by the defendant as the State tax upon the total amount of said assessment and as the county tax upon the apportionment of said assessment to each county, and city and county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said controller did publish for two weeks in one daily newspaper of general circulation published at the State capital of said State, and in two daily newspapers of general circulation published in the city and county of San Francisco, in said State, a notice that he had received from said State board of equalization said duplicate record of assessments of railways, and said duplicate record of apportionment of railway assessments, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, at 6 o'clock, p. m., and that, unless paid to the State treasurer at the capitol prior thereto, five per cent. would be added to the amount thereof.

329 "That a reasonable compensation for legal services, by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent,"

should be taken and considered as denied by defendant as fully as though such denial were set forth in the answer in this cause.

C. M. COGLAN was called and sworn as a witness on behalf of the defendant, and testified as follows:

I am the clerk of the State board of equalization and have in my custody the records of that board. The volume here produced, marked on the back "Record 67," is the minutes of the State board of equalization and is produced by me from the office of the State board of equalization.

Counsel for defendant then read in evidence, from page 27 of the volume identified by the witness as the minutes of the proceedings of the State board of equalization, the following matter therein contained, under date of Friday, August 17, 1888:

"The board met. Present: C. E. Wilcoxen, L. C. Morehouse, G. E. Sloss, John P. Gaffy, J. P. Dunn.

"On motion, all railroad companies having appeared, or notified the board that they would not appear, the board proceeded
320 to assess the railroads of the State operated in more than one county.

* * * * * * *

"The board invited the attorney general to be present to consult with the board in reference to the assessment of the railways, so as to have the same conform to the decision of the United States Supreme Court lately rendered in the railroad-tax cases. He recommended that the franchises of the Central Pacific and Southern Pacific companies, derived from the State, be assessed, and that the valuation thereof be stated separately in the record of assessments; that the board assess the moles, bridges and culverts of each road separately, and, in respect to certain railroad companies, to declare that the steamers used in operating the roads were not assessed; that is to say, that the assessment before made be divided, so as to show the value placed upon the State franchise of the Central Pacific and Southern Pacific Companies, and upon the moles, bridges and culverts of each road assessed. Whereupon the board proceeded to make such assessment, and it was ordered as follows: That the franchise of the Central Pacific Company derived from the State of California be assessed at $1,250,000; that the franchise of the Southern Pacific Railroad Company derived from the State of California be assessed at $1,000,000; that the moles, culverts, bridges and wharves upon which the tracks of the Central Pacific are laid be as-
331 sessed at $1,000,000; that the moles, culverts, bridges and wharves upon which the tracks of the Southern Pacific are laid be assessed at $400,000."

The witness produces and identifies the original record of the assessment of the Central Pacific Railroad Company made by the State board of equalization for the year 1888, which was offered in evidence on the part of defendant. Said record was to the effect that the State board of equalization, being in session on this 17th day of August, 1888, all members being present and having in considera-

tion the question of the franchise derived from the State of California, the roadway, road-bed and rolling stock of the Central Pacific Railroad Company within the State, for the year 1888, assessed the franchise derived from the State of California, the roadway, road-bed and rolling stock of said company within said State at the total sum of $15,000,000.

The witness then produced and identified a volume as containing the minutes of the State board of equalization of 1887, which was introduced in evidence on behalf of defendant, from which it appeared that the only portion of said record relating to any assessment of the property of defendant made for that year was as shown by the minutes of the proceedings of the 13th day of August, 1887, which were read in evidence and are as follows:

"SATURDAY, *August* 13, 1887.

"Board met. All the members present.

"As the week had been spent in examining railroad values
332 and various preliminary motions had been made, the understanding being that they should be recorded as having been made on this day. The following is a record of such motions:

"*Central Pacific.*

"Mr. Dunn moved that the Central Pacific be assessed at $28,000,000—no second.

"Mr. Gaffey moved that it be assessed at $20,000,000—seconded by Mr. Wilcoxen. The motion was carried by the following vote: Ayes, Dunn, Gaffey, Wilcoxen; noes, Sloss, Morehouse.

"*Central Pacific.*

"Mr. Morehouse moved that it be reduced to $17,000,000—seconded by Mr. Sloss. Mr. Gaffey moved an amendment that it be reduced to $18,000,000—no second. Mr. Morehouse's motion lost by following vote: Ayes, Morehouse, Sloss; noes, Dunn, Gaffey, Wilcoxen. Mr. Gaffey moved that it be reduced to $18,000,000, seconded by Mr. Morehouse; carried by the following vote: Ayes, Gaffey, Morehouse, Sloss; noes, Dunn, Wilcoxen."

On cross-examination, at the request of counsel for plaintiff, witness identified a paper, "Plaintiff's Exhibit 4," as being in the possession of the State board of equalization and among its records when he became secretary of said board, and that the same had been in his possession as such secretary ever since, until produced here in court.

333 Said paper was then offered in evidence on behalf of plaintiff by the attorney general, who stated that the offer was made to show that the State board made the change in the assessment of 1888 at the request of the defendant itself and in accordance with its statement, and that said document was also offered in evidence for all other purposes for which it might be pertinent in the case.

Defendant objected to the introduction of the document as incompetent, irrelevant and immaterial for the purpose mentioned.

The objection was overruled, to which ruling defendant then and there duly excepted.

The said paper was as follows:

EXHIBIT 4.

Original.

To the State board of equalization, Sacramento city:

The Central Pacific Railroad Company answers the questions propounded by the board as follows: and makes the following statement in relation to its property subject to taxation in the State of California, owned by it for the year ending on the first Monday in March, 1888, and of all property used in operating its railway during such year:

The length of railway owned and operated as a system in and out of the State is 1,344.14 miles.

Length of track, sidings and double track reduced to single
334 track is —; out of the State, 597 miles; in the State 747.14 miles.

The value of the franchise derived from the State within this State	$25 00
The value of the entire roadway, road-bed, rolling stock and rails within this State is	9,376,607 00
	$9,376,632 00

The entire length of railway of said company in California is 747.14 miles, operated in the following counties, with length in each county:

County.	Miles.
San Francisco	2.46
Alameda	83.52
Santa Clara	8.50
San Joaquin	56.75
Sacramento	41
Placer	112.75
Sierra	2.15
Nevada	30.25
Yuba	15.87
Sutter	10
Butte	45
Tehama	40.54
Shasta	82.08
Siskiyou	83.18
Stanislaus	22.63
Merced	36.75
Fresno	60.13
Tulare	13.58

Rolling Stock.

The following is a statement respecting rolling stock, as required by section 3664, Political Code, for the year ending first Monday in March 188–, and value of same.

Kind.	Number of each kind of rolling stock used in operating the entire road in and out of the State.	Number, kind and value of rolling stock owned, but used out of the State, either upon divisions of road operated by the company, or by other railway companies upon their line.		Number, kind and value of rolling stock owned and operated upon the road in this State.	
		Number.	Value.	Number.	Value.
Locomotives (including tenders)	242	84	$504,000	158	$948,000
Sleepers, cars, ‡ to Pullman Palace Co's	24	16	64,000	8	32,000
Passenger cars	176	45	135,000	131	393,000
Emigrant and smoking cars	72	22	33,000	50	75,000
Baggage, express and mail cars	70	22	22,000	48	48,000
Cabooses	105	25	15,000	80	48,000
Box freight	2,572	700	280,000	1,872	748,800
Flat freight	1,806	500	150,000	1,366	409,800
Dump, hand, section	568	250	12,500	318	29,350
All other kinds of cars, snow-plows	10	6	6,000	4	4,000
Totals			$	4,035	$2,735,950

NOTE.—During the calendar year 1887, 16 sleepers were remodeled into passenger coaches, hence the discrepancy in the number of sleepers between the years 1886–'7.

336 NOTE.—Please give a description of the road as concisely as possible, but sufficient to identify it, giving the points of entrance into and exit from each county, and in such form as to facilitate the description of the road when apportioned to each county.

E. W. MASLIN, *Clerk.*

The following is a description of the entire length of the railway of said company in this State, and its right of way for the same:

The description of the railroad of said railroad company has heretofore been given in detail, and is now on file in the archives of the State board of equalization, to which reference is hereby made.

Class A.

Statement of the earnings and expenses of the road as a system in and out of the State for year ending December 31st, 1887.

1,360.66 miles December 31, 1887. Average for the year 1887—1,348.03 miles.

337

Earnings.		*Expenses.*	
	$		$
Passenger	In amount of $1,200,00 shown below.	Operating	
Freight		Rental to other roads	
Mail and express		Taxes	
Miscellaneous		Miscellaneous	

Net amount of guaranteed rental for year 1887, $1,200,000.

Other Receipts.

		$
Interest and dividends	Included in the above sum of $1,200,000 in its settlement with S. P. Co.	
Rentals		
Net earnings of steamers		
Total revenue		

Payments.

Interest	In amount of $1,200,000 shown above.	$3,793,631 04
U. S. sinking fund		436,137 22
Bonds redeemed from sinking fund, $4,065,000		
Company's sinking fund		275,000
Land expenses		64,253 04
Dividends		
Total		$4,569,022 20
Overplus		$1,062,163 07

The actual net earnings from the traffic were $1,086,733.31, the balance of $113,266.69 to make the guaranteed rental of $1,200,000 was paid by the lessee.

338 *Class B.*

The following is the classification of subjects which are included in the term "operating expenses":

Superintendent's expenses	In amount of $1,200,000 shown on page 4.	$
Station expenses		
Train expenses		
Water expenses		
Steamer expenses		
Office expenses		
Legal expenses		
Repairs to tracks		
Repairs to engines		
Repairs to buildings, wharves and bridges		
Damages		
Salaries of officers		
State other expenses		

Class D.

State names of roads leased and the amount of annual rental paid, to include leased lines operated in only one county.

	$

339 *Class C.*

Companies operating roads in and out of the State will please state the amount of earnings and expenses of the road in this State. Earnings and expenses being those of the main road with its leased line considered as a system for year ending December 31, 1887.

747.14 miles, December 31, 1887. Average for year 1887, 734.51 miles.

Earnings.		*Expenses.*	
Passenger and freight.....	In amount of $653,853.46 shown below.	Operating.....	In amount of $653,853.46 shown below.
Mail and express		Rental.....	
Miscellaneous.....		Taxes	
Totals		Miscellaneous	

Net amount of guaranteed rental for year 1887, $653,853.46.

Class D.

State names of roads leased and the amount of annual rental paid, to include leased lines operated in only one county:

.....	.....
.....	
.....	
.....	.....

340 The actual net earnings from the traffic were $592,132.58, the balance of $61,720.88 to make guaranteed rental of $653,853.46 was paid by the lessee.

State the assessed value for the preceding year, assessed by the assessor, of all property owned by the company, or held by trustees for the company, and classify the same as land by acre, stations, depots, steamers, city lots, etc.:

See return of previous year.....	$
....	
.....	
... .	

Names of Steamers and Value.

Apache	$8
Modoc	
Alameda	
Amador	
Capital	
Oakland	
Piedmont	
El Capitan	
Transit	
Thoroughfare	
Rival	
Barges "Ace of Spades" and "Yolo"	

The following is a description of all other property of every kind owned by said company located in the State, with the value thereof.

341 But little change from previous year, and heretofore given.

STATE OF CALIFORNIA, *City and County of San Francisco,* } *ss:*

I, E. H. Miller, Jr., being duly sworn, depose and say that I am the secretary of the Central Pacific Railroad Company, the principal place of business of said company being in the city and county of San Francisco, and that the foregoing statement and answers to questions therein contained are in all respects correct and true.

E. H. MILLER, JR.

Subscribed and signed before me, this the 20th day of July, 1888.

E. B. RYAN,
Notary Public.

[SEAL.]

Class A.

Statement of the earnings and expenses of the road as a system in and out of the State for year ending December 31st, 1887.

1,360.66 miles December 31, 1887. Average for the year 1887, 1,348.03 miles.

Earnings.		*Expenses.*	
Passenger	$3,951,206 85	Operating	$7,141,156 88
Freight	8,505,988 32	Rental to other roads	33,816 60
Mail and express	552,108 60	Betterments	220,879 56
Miscellaneous	454,539 99	Taxes	435,556 64
		Miscellaneous	45,549 35
	$13,463,843 76		$7,876,959 03
Net			$5,586,884 73

342 *Other Receipts.*

Interest and dividends	$20,979 11
Rentals	14,525 12
Net earnings of steamers, Sac. river	8,796 31
Total revenue	$5,631,185 27

Payments.

Interest	$3,793,631 94
U. S. sinking fund	436,137 22
Company's sinking fund	275,000
Bonds redeemed from sinking fund, 4,065,000	
Land expenses	64,253 04
Dividends	
Total	$4,569,022 20
Overplus	$1,062,163 07

The actual net earnings were $1,085,733.31.

343 *Class B.*

The following is the classification of subjects which are included in the term "operating expenses:"

Superintendent's expenses	$66,037 79
Station expenses	704,841 13
Train expenses	613,495 24
Water expenses	81,802 23
Steamer expenses (ferry service)	296,666 60
Office expenses	210,971 37
Legal expenses	113,938 30
Repairs to track	771,744 24
Repairs to engines	351,165 68
Repairs to buildings, wharves and bridges	225,486 59
Damages	36,129 29
Salaries of officers and general expenses	290,642 29
State other expenses (miscellaneous)	56,401 04
Telegraph service	84.729 76
Sleeping-car service	36,970 33
Wharf service	102,665 88
Locomotive service	2,266,775 89
Snow service	38,807 75
Repairs to snow-sheds	59,906 84
" " cars	427,261 12
" " machinery	66,782 16
Stationery and printing	32,231 75

Advertising	$20,643 61
Loss and damage to freight	11,226 96
Insurance and loss by fire	32,953 61
Mileage	126,574 90
Engineering	13,304 53
Total	$7,141,156 88

344 *Class C.*

Companies operating roads in and out of the State will please state the amount of earnings and expenses of the road in this State. Earnings and expenses being those of the main road with its leased line considered as a system ending December 31, 188–.

747.14 miles.

Earnings.		Expenses.	
Passenger and freight	$6,789,925 65	Operating	$3,891,216 38
Mail and express.	300,843 98	Rental	7,200 00
Miscellaneous	247,678 84	Betterments	184,442 44
		Taxes	263,109 91
		Miscellaneous	24,819 84
Totals	$7,336,448 47		$4,370,788 57

Class D.

State names of roads and the amount of annual rental paid, to include leased lines operated in only one county.

The foregoing pages of said statement and affidavit of E. H. Miller, Jr., were all attached together forming one document, Exhibit 4. It was admitted by defendant that said E. H. Miller, Jr., making and signing the affidavit to said statement, was the then secretary of defendant, and that his signature to said affidavit was genuine.

345 The witness also identified a document being defendant's verified statement to the State board of equalization for the fiscal year 1887, which document the witness testified was produced by him from the records of said board in his possession. Said document was marked Plaintiff's Exhibit 6, and was introduced and read in evidence by plaintiff as follows:

EXHIBIT 6.

To the State board of equalization, Sacramento city:

The Central Pacific Railroad Company answers the questions propounded by the board as follows, and makes the following statement in relation to its property subject to taxation in the State of California, owned by it for the year ending on the first Monday in March, 1887, and of all property used in operating its railway during such year.

The length of railway owned and operated as a system in and out of the State is 1,316.50 miles.

Length of track (see note, page 8), and double track 10.79, reduced to single track is 1,327.29; out of the State, 597 miles; in the State, 730.29 miles.

346 The value of the franchise and entire roadway, road-bed and rails within this State is $12,273,785.00.

The entire length of railway of said company in California is 719.50 miles, operated in the following counties, with length in each county:

County.	*Miles.*
San Francisco	2.46
Alameda	83.52
Santa Clara	8.50
San Joaquin	45.75
San Joaquin	11
Sacramento	41
Placer	92.25
Placer	20.50
Nevada	30.25
Yuba	15.87
Sutter	10
Butte	45
Tehama	40.54
Shasta	82.08
Siskiyou	55.54
	586.41

County.	*Miles.*
To am't for'd	586.41
Stanislaus	22.63
Merced	36.75
Fresno	60.13
Tulare	13.58
Total	719.50

Recapitulation.

Main line	305.88
S. J. V. branch line	144.09
Cal. and Oregon branch line	269.53
	719.50

The following is a statement respecting rolling stock, as required by section 3664, Political Code, for the year ending first Monday in March, 1887, and value of same.

Kind.	Number of each kind of all rolling stock used in operating the entire road in and out of the State.	Number, kind and value of rolling stock owned, but used out of the State, either upon divisions of road operated by the company, or by other railway companies upon their line.		Number, kind and value of rolling stock owned and operated upon the road in this State.	
		Number.	Value.	Number.	Value.
Locomotives (including tenders)	236	84	$502,000	152	$912,000
Sleepers, cars, ¼ owned by P. P. Car Co	40	26	104,000	14	56,000
Passenger cars	153	45	137,500	108	270,000
Emigrant and smoking cars	70	22	33,000	48	72,000
Baggage, express and mail cars	58	22	22,000	36	36,000
Cabooses	95	25	15,000	70	42,000
Box freight	2,449	700	280,000	1,749	699,600
Flat freight	1,875	500	150,000	1,375	412,500
Dump, hand, section	521	250	12,550	271	13,550
Snow-plows				3	3,000
All other kinds of cars	47			47	15,800
Totals				3,873	$2,532,450

348 NOTE.—Please give a description of the road as concisely as possible, but sufficient to identify it, giving the points of entrance into and exit from each county, and in such form as to facilitate the description of the road when apportioned to each county.

E. W. MASLIN, *Clerk.*

The following is a description of the entire length of the railway of said company in this State, and its right of way for the same.

Beg. at Delta, running thence westerly to north line of N. W. ¼ of N. W. ¼ sec. 34, T. 36 N., R. 5 W., M. D. B. & M.; thence northerly through W. ½ of sec. 27 to a point near the center of E. ½ of S. E. ¼ of sec. 21; thence N. by E. through the N. W. ¼ of sec. 22, continuing in same course through center of sec. 15 to a point near the center of S. E. ¼ sec. 10; thence east to a point near center of S. W. ¼ sec. 11; thence northerly to center of S. ½ of N. W. ¼ sec. 11; thence east and north to point in center of south line of S. E. ¼ sec. 2; thence northwesterly and northerly to center of S. W. ¼ of N. E. ¼ of sec. 2; thence northwesterly to a point in N. E. ¼ of N. W. ¼ of sec. 2; thence easterly to north line of N. E. ¼ of N. E. ¼ of said sec. 2. All in T. 36 N., R. 5 W.; thence northeast through S. E. ¼ of S. E. ¼ of sec. 35 and S. W. ¼ sec. 36; thence northerly through E. ½ of N. W. ¼ sec. 36, the E. ½ of S. W. ¼ and E. ½ of N. W. ¼ of sec. 25; thence northeast through S. E. ¼
349 sec. 24. All in T. 37 N., R. 5 W.; thence N. E. through N. W. ¼ of S. W. ¼ and N. W. ¼ of sec. 19; S. E. ¼ sec. 18, N. W. ¼ of S. W. ¼ sec. 17, the N. W. ¼ of sec. 17, E. ½ of S. E. ¼ of S. W. ¼, N. W. ¼ of S. E. ¼ and W. ½ of N. E. ¼ sec. 8, the S. E. ¼ sec. 5 to west line of N. W. ¼ of S. W. ¼ sec. 4; thence on sec. line between secs. 4 and 5 to northeast corner of S. E. ¼ of N. E. ¼ of sec. 5; thence N. E. to N. E. corner of N. W. ¼ of N. W. ¼ sec. 4, all in T. 37 N., R. 4 W.; thence through S. E. ¼ of S. W. ¼ of sec. 33 (N. Ely.) to north line of N. E. ¼ of S. E. ¼ sec. 33; thence north and northeasterly through N. E. ¼ sec. 33, S. E. ¼ sec. 28, W. ½ of N. W. ¼ sec. 27; thence W. ½ of S. W. ¼ sec. 22, northeasterly through N. W. ¼ sec. 22; the S. E. ¼ of S. W. ¼ sec. 15, N. ½ of S. E. ¼ sec. 15; thence easterly through N. ½ of S. W. ¼ sec. 14; thence northerly to center N. E. ¼ sec. 14; thence northwesterly and northerly through N. W. ¼ of N. E. ¼ sec. 14; thence northerly through E. ½ of W. ½ sec. 11; thence northeasterly through S. E. ¼ sec. 2 to a point on south line of S. E. ¼ of N. E. ¼ of sec. 2; thence north to Siskiyou county line at a point near center of north line of S. E. ¼ of N. E. ¼ of said sec. 2. All in T. 38 N., R. 4 W.

Maps of the line of railroad not heretofore described are rendered herewith and made a part hereof. (Said maps being here omitted by consent.)

350 SAN FRANCISCO, *August 9th*, 1887.

E. W. Maslin, Esq., Sac'to.

DEAR SIR: Your favor of 8th inst. is rec'd in answer our secretary informs me:

1st. Pajaro & Santa Cruz R. R.

The earnings of this road are in S. P. R. R. statement and cannot be segregated—the two operated as one.

2nd. C. P. R. R. Item of $49,292.72.

This is am't of rental for Wilmington division of S. P. R. R., and contracted under lease of said division to C. P. R. R. Co. Said Wilmington division is now operated in S. P. R. R. system by S. P. Co. The $36,963.35 is rental of N. P. R. R.

3rd. Rental Col. Div. $505,266.00.

242.51 miles of Col. Div. leased to A. & P. R. R. for the sum of $1,800 p'r mile p'r annum, $436,266.

57.50 miles from Colton to Los Angeles, $1,200 per annum.

$69,000. Making a total of $505,266.

4th. The $30,000 p'r mile theory for Col. Div. is an untrue statement to the board; the above is the actual am't of rental for 300.00 miles.

Very respectfully yours, E. B. RYAN.

Class A.

351 Statement of the earnings and expenses of the road as a system in the State for year ending December 31st, 188–, including N. P. R. R., 5 miles, and Sac. & Plac. R. R., 564 miles.

Earnings.		Expenses.	
Passenger.....	$3,610,878 83	Operating	$5,694,167 75
Freight.....	6,938,978 35	Rentals of other roads.....	36,963 35
Mail and express.	533,850 67	Taxes	444,959 09
Miscellaneous ...	515,778 90	Betterments, etc.	157,941 50
		Miscellaneous ...	92,180 32
	$11,599,486 75		$6,426,212 01

Net, $5,173,274.74.

Other Receipts.

Interest and dividends	7,200
Rentals where road, or part thereof, is leased to another company.....	525 12
Land receipts to redeem land bonds.....	60,000
Net earnings of steamers (see below)....	
Total revenue.....	$

Payments.

Interest	$3,793,863 38
U. S. sinking fund	418,271 56
Company's sinking fund	803,500
Bonds redeemed (land bonds)	60,000
Land expenses	81,449 31
Dividends (none) net loss on steamers	8,259 38
	$5,165,343 63
Overplus	$75,656 23

352 *Class B.*

The following is the classification of subjects which are included in the term "operating expenses:"

Superintendent's expenses	$64,083 06
Station expenses	622,956 83
Train expenses	507,348 54
Water expenses	51,197 64
Steamer expenses	293,422 43
Office expenses	193,375 50
Legal expenses	104,912 02
Repairs to track	531,573 79
Repairs to engines	302,339 34
Repairs to buildings, wharves and bridges	92,717 67
Damages	41,820 28
Salaries of officers and general expenses	430,760 97
State other expenses, engineering	9,347 82
Telegraph service	81,276 22
Sleeping-car service	49,219 68
Wharf service	71,351 12
Locomotive service	1,529,278 89
Snow service	16,359 98
Repairs to snow-sheds	52,182 61
Repairs to cars	379,088 81
Repairs to machinery and tools	49,011 02
Stationery and printing	23,386 80
Advertising	15,646 73
Loss and damage to freight	27,445 66
Miscellaneous expense	51,981 54
Insurance and loss by fire	19,284 65
Mileage	33,505 23
Leased lines	49,292 92
Total	$5,694,167 75

353 *Class C.*

Companies operating roads in and out of the State will please state amount of earnings and expenses of the road in this State. Earnings and expenses being those of the main road with its leased line considered as a system for year ending December 31, 188–.

Earnings.		Expenses.	
Passenger and freight	$6,472,313 62	Operating	$3,527,780 31
Mail and express.	245,579 34	Rental	7,200 00
Miscellaneous ...	308,382 06	Taxes	275,556 27
		Betterments. ...	133,199 07
		Miscellaneous ...	49,104 46
Totals.....	$7,026,275 02		$3,992,840 11

Class D.

State names of roads leased and the amount of annual rental paid, to include leased lines operated in only one county:

Sac. and Plac. R. R. 5.64 miles.....	$7,200 00
Union Pacific R. R. 5.00 miles.....	29,763 35
Berkeley branch R. R. 3.84 miles in C. P. earnings	
14.48 "	

State the assessed value of the preceding year, assessed by the assessor, of all property owned by the company, or held by trustees for the company, and classify the same as land by acre, stations, depots, steamers, city lots, etc.:

354	608,422 acres of land.....	$989,976	....
	Station grounds—stations, depots, etc.....	2,515,890	....
.....	.....	.....	....
.....	.....	.....	....
..	.....	.....	....
.....	.....	.....	....
.....	.....	.....	....
.....	.....	.....	....
.....	.....	.....	....
.....	.....	... .	....

Names of Steamers and Value.

Apache	$25,000	....
Modoc	25,000	....
Enterprise	500	....
Alameda	21,000	....

Amador	$24,000	....
Capital	40,000	....
El Capitan	22,000	....
Oakland	38,000	....
Piedmont	70,000	....
Transit	30,000	....
Thoroughfare	28,400	....
Rival	1,200	....
Barge Ace of Spades	1,000	....
" Yolo	1,000	....
	$327,100	....
Julia	12,000	....
	$339,100	....

355 OFFICE OF SUP'T TRACK, *April 27th*, 1887.

Mr. E. B. Ryan, tax-collector, —— building.

DEAR SIR: There have been so many little changes in track, and we have been so much occupied by other and more important work, that we have not computed the length of side tracks on our company's system of roads, since Dec. 31st, '84; excepting only such lines as reported on to the railroad commissioners. On Dec. 31st, '84, the length of sidings, spur tracks and side tracks, of every description, was equal to fourteen and four-tenths per cent. of the main-line mileage of the roads named below, and, in my judgment, this proportion remains practically the same at this date, for Central Pacific R. R. and branches, California Pacific and branches, Northern railway, San Pablo & Tulare R. R., Stockton & Copperopolis R. R., Amador Branch R. R., Berkeley Branch R. R., Southern Pacific R. R. of California and branches, Los Angeles and San Diego R. R., Los Angeles and Independence R. R. The same proportion will, I think, also hold good for the Southern Pacific Branch R. R., Sacramento and Placerville R. R. and the Vaca Valley & Clear Lake R. R.

Yours, etc.,

W. G. CURTIS,
Sup't of Track.

356 STATE OF CALIFORNIA, *City and County of San Francisco,* } ss:

I, E. H. Miller, Jr., being duly sworn, depose and say that I am the secretary of the Central Pacific Railroad Company, the principal place of business of said company being in the city and county of San Francisco, and that the foregoing statement and answers to questions therein contained are, in all respects, correct and true.

E. H. MILLER, JR.

Subscribed and signed before me, this 29th day of April, 1887.

[SEAL.]

E. B. RYAN,
Notary Public in and for the City and County of San Francisco, Cal.

Counsel for plaintiff stated in reference to said Exhibit 6 that the same covered the assessment for the year 1887, and that he desired to call special attention to the fact that the valuation of the franchise and entire roadway, road-bed and rails within the State is specified, and that the assessment for that year follows that description precisely as inserted on the statement of the railroad company, and that it (said Exhibit 6) was offered for that and all other purposes.

Defendant's counsel objected to the introduction of Exhibit 6 for the purpose specified, on the ground that the same was incompetent, irrelevant and immaterial for such purpose.

357 The objection was overruled, to which ruling defendant then and there duly excepted. It was admitted by defendant that said E. H. Miller, Jr., making and signing the affidavit to said Exhibit 6 was the then secretary of defendant, and that his signature to the affidavit to said exhibit was genuine.

L. C. MOREHOUSE, called and sworn as a witness on behalf of defendant, testified as follows:

By Mr. FOULDS:

Q. What is your residence and official position, if any, Mr. Morehouse?

A. My residence is Alameda county. I am a member of the State board of equalization.

Q. For how long have you been a member of the State board of equalization?

A. Since January, 1883, I think.

Q. Continuously?

A. Yes, sir.

Q. Mr. Morehouse, do you remember the act of assessment by the State board of equalization of the property of the Central Pacific Railroad Company for the year 1887?

A. I do.

Q. Will you look at Plaintiff's Exhibit 1 and state, if you can, what elements, or what was taken into consideration by the State board of equalization in arriving at the sum of eighteen million dollars as being the value of the franchise, roadway, road-bed, rails and rolling stock of the Central Pacific Railroad Company for the year 1887, as shown in this assessment?

358 At the suggestion of the court, the witness was temporarily withdrawn and documentary and oral evidence introduced, on behalf of the defendant, tending to establish the allegations of the affirmative portions of the answer as to ownership of franchises derived from the Government of the United States by the defendant, and the incorporation and consolidations of the various companies constituting the defendant, and as to the mortgage and the lien of the United States upon the road of the defendant, as established by the findings of fact herein.

The witness was then recalled, and answered the next preceding question as follows:

A. Everything that was included in the law. We covered the franchise and followed the language of the law, as I understood it, all the way through.

Attorney General HART:

Q. The language of the statute law?

A. Of the constitution—the franchise, the road-bed, the right of way—everything included in the language of the law.

By Mr. FOULDS:

Q. What was included in the description of the property designated by the word "franchise" in that assessment?

A. Those matters were thoroughly discussed before our board from time to time and at different times. The bearing that the Federal franchise had upon the value of the road was discussed in our meetings, and it was understood that we were assessing all of the things that are mentioned in the constitution.

Q. Well, the constitution simply uses the word "franchise."
359 What I want to know is what you assessed when you stated in the assessment that you had assessed the franchise of the defendant?

A. Belonging to the State of California the franchise of the State—that is, the franchise belonging to the property situated in the State of California.

Q. Did you include all of the franchise?

A. We did.

Q. Now, Mr. Morehouse, what property of the Central Pacific Railroad Company was included or considered by the State board of equalization in its assessment of the franchise, roadway, road-bed, rails and rolling stock of the Central Pacific Railroad Company for the year 1887?

A. You mean the elements of value. I suppose that is what you want me to answer. It was all the franchise. The Government franchise was discussed at length; the Federal franchise was discussed at length in our board. On the part of the railroad they objected, and stated that it was not worth ten dollars, and could not be assessed, and it was discussed, and I think we had a consultation with the secretary of our board. It was claimed that we were liable to make a mistake by including a value upon the Government franchise.

Q. What do you mean by the Government franchise? Do you mean the franchise derived from the Government of the United States?

A. Yes, sir; and it was a question in our mind. I objected to it personally, and so did some of the members, and I think in
360 1883, the reason that we assessed it together was that we were instructed by the attorney general of the State, and associate counsel, in a letter—I think Mr. Delmas, Terry and others, to assess it as a whole—to group it. Our secretary pointed out to several of

us, and I know we discussed it often—the trouble we were liable to get in in assessing them as a whole, and we did include all those things.

Q. When you say "all of those things," what do you mean?

A. I mean all of the franchises derived from the General Government, as well as from the State, and it was well understood and talked over. The secretary having been on the board previous to my coming into the board, and, in fact, all of the members—we were all new at that time—who went in in 1883—we referred to him often in regard to those matters, and up until 1888, and then we purposely left it out.

Q. In 1888?

A. Yes, sir—intentionally omitted it.

Q. Now, in making the valuation of $18,000,000, as shown by the assessment of 1887, was there or was there not any deduction from the actual value of the property of the Central Pacific Railroad Company made on account of any mortgage debt that was then outstanding upon its property?

A. No deduction.

Q. You were also a member of the State board of equalization, if I remember correctly, for the succeeding year 1888, were you not?

A. Yes, sir.

361 Q. And participated in the assessment of the property of the Central Pacific Railroad Company for that year?

A. I have never been absent, I believe, from any meeting in ten years.

Q. By the record of assessment, which has been introduced in evidence, for the year 1888, by the State board of equalization of the property of the Central Pacific Railroad Company, it appears that the property for that year, 1888, was assessed at the sum of $15,000,000. Can you state to the court what element was included by the State board of equalization in making the assessment for 1887 of the same property at the sum of $18,000,000, which was excluded in making the assessment of the same property in the year 1888 at $15,000,000?

A. It was not the same property exactly. We excluded something and, consequently, it was not the same property. We excluded the Federal franchise.

Q. It was not the same property?

A. Well, there was some property that was included one year that was excluded another; that is, an element of value.

Q. Well, just state what that was.

A. The Federal franchise. In answering that question, I would like, if I am allowed, to say this: that that matter might apply to me and not to other members of the board. That is, in arriving at those values, those things would not always be a positive thing as regards each member of the board.

362 Attorney General HART:

Q. Well, what you mean is then what operated on your mind,

and you do not know whether it operated on the minds of others or not?

A. Well, not quite so broad as that, General.

Q. Well, place your own limitations on that.

A. Well, I could explain that. It made an influence on my mind, and we omitted the franchise.

By Mr. FOULDS:

Q. Now, Mr. Morehouse, can you state if the board, as a board, considered the franchises or rights, which had been derived by the Central Pacific Railroad Company from the Government of the United States, as an element of value in making the assessment of 1888?

A. No, sir; because we had the evidence before us. The suit had been decided, and the matter was thoroughly discussed, and we excluded it intentionally, as the record will show, if you will take the record of 1888,—not the record of apportionment, but the assessment will show that.

Q. What decision of the Supreme Court do you refer to, Mr. Morehouse?

A. I could not give you the title of the case, but I know that it was discussed there.

Q. You would recognize it, if you saw it, I suppose, Mr. Morehouse?

A. Yes, sir. It was a case wherein the Federal franchise came up, because I know that we anticipated it.

The witness identified the decision referred to by him as a
363 decision of the Supreme Court of the United States, filed at the October term of 1887, reported in volume 127 of the U. S. Reports at page 1. The case is entitled California *vs.* Central Pacific Railroad Company, etc.

Q. What did the board do, in the year 1887, in making its assessment of the Central Pacific Railroad Company's property, in regard to the Federal franchise held by that company?

A. We assessed them as usual. We assessed the franchise belonging to the railroad company—belonging to that portion of the road in this State. It might have been one or fifty—it was their franchise—their right. That is my understanding of it. We talked it over often.

Q. You talked it over in the board?

A. Yes, sir, and we purposely omitted it thereafter.

Q. Well, did you or did you not consider the value of the Federal franchise of the Central Pacific Railroad Company in arriving at the value of its properties?

A. I did.

Q. Now what was it as to the rest of the board?

A. As to what value any member of the board put on when we assessed those five things as a whole—what particular value they placed upon any individual item—would be a hard matter to get at,—for them to say. I would not pretend to say.

Q. But you are satisfied, from the nature of the conversa-
364 tion between members of the board, that they placed some value upon these Federal franchises?

A. Yes, sir; I say, for myself, that I did; that when it was withdrawn, it had taken a large portion of the value.

Mr. FOULDS—addressing the court: Now, we offer to prove by this witness that at every session, during every year of the existence of the State board of equalization, from the year 1883, and prior to the year 1888, the State board of equalization, in making its assessment of the valuation of the property of the Central Pacific Railroad Company, included in its total estimate the value of the Federal franchise held by that company by virtue of the acts of Congress of the United States which have been introduced in evidence, and that the valuation of the Federal franchise was blended into the general assessment of that company in such a manner as to be indistinguishable from it and not capable of separation.

Objected to by counsel for plaintiff as incompetent, irrelevant and immaterial.

The objection was sustained by the court, to which ruling defendant then and there duly excepted.

Cross-examination:

On cross-examination the witness testified as follows:

By Attorney General HART:

Q. Mr. Morehouse, who were members of the State board of equalization in August, 1887?

365 A. Mr. Wilcoxen was chairman, John P. Gaffy, Gordon E. Sloss and the comptroller and myself.

Q. Mr. Dunn?

A. Yes, sir.

Q. Since that time Mr. Sloss has died, has he not?

A. Yes, sir.

Q. Have you, at this time, a present, personal, distinct recollection of the circumstances of making the assessment, on the 13th of August, 1887, against the Central Pacific Railroad Company?

A. In the main, yes, sir; not as to the details altogether—not vividly.

Q. When you say "in the main," what do you mean by that?

A. I mean that if you should ask me generally whether I seconded a certain motion, or whether I voted for a certain motion, I should not be able to tell you; but I do know about what transpired.

Q. That is, you know that the road was assessed?

A. Yes, sir; I know that.

Q. Now, is it not a fact that you have read the minutes since that time?

A. Several times; a great many times.

Q. Now then, have you any distinct recollection of the circumstances of making the assessment, when you were present, without considering anything that is written on the minutes?

366 A. Have I a recollection outside of the minutes?

Q. Yes, sir.

A. Yes, sir.

Q. Now then, who appeared there on behalf of the railroad company?

A. E. B. Ryan for one, and some people that appeared there for the railroad that I would not remember their names at present, but there were parties——

Q. I now hand you Plaintiff's Exhibit 6, and ask you to look at it and state whether you have, at this time, any recollection as to whether or not that document was examined by you at that time, or previous to the assessment of the Central Pacific Railroad Company for 1887?

A. Yes, sir.

Q. Do you know whether or not that document was received by the State board of equalization as the statement of the Central Pacific Railroad Company for the purposes of assessment or not?

A. I know that it *is* answers to the questions propounded by our board under the law, and that it was submitted to us in writing under instructions or directions from us. We sent the statement to them with these questions to be answered.

Q. Now, you have testified, Mr. Morehouse, that you understood, or your intention was, that the franchise of the Central Pacific Railroad Company was assessed for the year 1887?

A. Yes, sir.

367 Q. Now, do you know why it was that the statement which was furnished—the blank statement which was furnished the State board of equalization—used the expression "franchise," as contradistinguished from the word "franchises"?

A. No, sir.

Q. Do you understand, at this time, and did you at that time, the difference between the word "franchise" and "franchises"?

A. Probably.

Q. Well, you did, didn't you?

A. Yes, sir.

Q. Then, as a matter of fact, you understood the word "franchise" in the singular to mean one franchise, didn't you?

A. I don't know that I did.

Q. Well, did you understand it to mean several franchises?

A. I understood it to mean everything which pertained to the rights and privileges of that road—the franchise, whatever it was.

Q. Then, as a matter of fact, you did not take into consideration the distinct difference between the State franchise and the Federal franchise?

A. It is my impression that they were all grouped together—the franchises belonging to that road, let them come from what source they may.

Q. Now, is it not a fact, Mr. Morehouse, that at that time you gentlemen had not gone into the consideration of the distinc-

368 tion or difference between the State franchise and the Federal franchise?

A. You say, is it not a fact we had not?

Q. Yes.

A. No, sir, it was the contrary; we had.

Q. Then what had you, at that time, considered constituted a Federal franchise?

A. Well, if you will ask me those questions, I will have to go back into former years.

Q. Well, what you understood in 1887?

A. Well, I have to tell you why and how.

Q. Well, just state what you understood was the difference between the Federal franchise and the State franchise in 1887, at the time of making this assessment—the difference between the two, if any?

A. What do you mean by that?

Q. What I mean is as to what constituted the franchise?

A. I don't think there was any difference in the description. We did not make any difference in the description.

Q. Well, now, why was it that you did not use the expression "franchises"?

A. I could not answer that question. It is a thing I never gave a thought to, the difference between franchise and franchises; but the word "franchise," as I understood it, and as I suppose the board understood it, covers all the rights of the road within this State.

Q. Well, is it not a fact that the words franchise, roadway, road-bed and rails within the State was used because of that lan-
369 guage, in substance, being the expression contained in the constitution of the State of California?

A. Because the franchise, and the rolling stock, and everything else was spread over other miles that were not within this State.

Q. Well, what I mean is that the word "franchise" and the words "entire roadway, road-bed and rails within the State," as contained in the statement, had reference to the classification of property as classified by the State constitution?

A. We were compelled to classify it that way, yes, sir.

Q. Well, I say it was classified in that way.

A. Yes, sir.

Q. Then, as a matter of fact, you intended by that statement (Plaintiff's Exhibit 6), which was furnished by you, to contain the precise description which the provisions of the State constitution provided for?

A. Intended to have it contain the language?

Q. That is what I mean.

A. Yes, sir, the language.

Q. And, therefore, if, as a matter of fact, the State constitution used the singular of franchise, the State franchise, and not the Federal, you meant the same in this statement, did you not?

A. No, sir; we meant that it applied—that was the understanding that we had of it—whether it was proper or not—that it applied to all franchises or rights derived from every source that were elements of value.

Q. Now, what did you understand at that time, the 13th
370 day of August, 1887,—what did you understand that the railroad company meant by the expression "the value of the franchise," contained in that statement?

A. What did I understand that the railroad company meant by that? They meant to answer that question.

Q. Well, what did they mean was the franchise?

A. I have not any way of knowing what they meant. I have not any way of knowing.

Q. I will ask you now, as a matter of fact, who presented that statement to the State board of equalization?

A. It was mailed to the State board originally.

Q. Well, who presented it?

A. The railroad company.

Q. Now, then, did any one appear before the State board of equalization in reference to that statement and the assessment, before the assessment was made?

A. Yes, sir.

Q. Who?

A. E. B. Ryan, and sometimes others representative of that company, for the purpose of explaining that statement and their position.

Q. For the railroad company?

A. Yes, sir.

Q. And that was the capacity in which you received him and entertained him, so far as hearing his plaints before the board?

A. Yes, sir.

Q. Now, is it not a fact that, at that time, Mr. Ryan ex-
371 plained to you what he understood was meant by that expression, in the statement, of the word franchise?

A. Well, whether he did in 1887 or not, I could not say, but at a great many times we had his views upon those things, not only mostly as to the values of those things, but they always claimed that the Federal franchise was not assessable, and that is why I say it was discussed often before our board, and always while they were present.

Q. Then, as a matter of fact——

A. We did not agree with him.

Q. Then, as a matter of fact, if the assessment against the franchise, roadway, road-bed and rails of this company contained the Federal franchise, then the statement to you furnished by the railroad company, including the same words, also contained the Federal franchise?

Objected to by counsel for defendant as not cross-examination and incompetent, as asking for the opinion of the witness, on the grounds that the papers speak for themselves, and the witness cannot testify as to what the railroad representatives meant by the use of the language contained in the paper.

The objection was overruled by the court, to which ruling defendant then and there excepted.

A. The statement contained it;—yes, sir, contained it;—yes, sir, contained these words; but it did not contain a valuation.

(Attorney General HART:)

Q. Oh, I understand that. Now, what, if anything, did
372 Mr. Ryan say at that time to the board—and previous to that time—as to the value of the Federal franchise?

A. As I remember distinctly, they claimed that it had no value—no intrinsic value; also that it was not assessable—not taxable; that it had no real value—no taxable value.

Q. And did not he, as a matter of fact, at that time state to you that it was not worth more than ten dollars?

A. Well, that figure has been used in connection with some of the franchises, and possibly that; because it was the Federal franchise that they put the stress upon,—that it was not assessable.

Q. That it had no value?

A. It had no value,—at least no assessable value; and, consequently, when they put these figures down, as you have asked me the question, I suppose they do not count those as having any valuation.

Q. Now, Mr. Morehouse, in making this assessment, so far as you are personally concerned, did you put any value upon the franchise separately from the balance of the assessment?

A. No, sir; there was no separate value placed upon it. It was grouped together under instructions.

Q. Then, as a matter of fact, when the board voted——

A. If I had my way, I should have put a separate value upon it.

Q. Then, as a matter of fact, when the members voted,
373 sitting as a board, upon that assessment—then as to the views of each member as to the classification—the value of each particular property mentioned was not settled upon at that time?

A. No, sir. One member may have figured the franchise at one figure and the rolling stock at another, and they may have come out to the same conclusion, having different values on different things. Those were estimates. Having instructions to group them as a whole, consequently, we grouped and assessed them as a whole.

Q. Now, I show you the duplicate assessment-roll of the Central Pacific Railroad Company, and I ask you now to look at it. Commencing at the second line, it reads as follows:

"And having under consideration the assessment of the franchise, roadway, road-bed, rails and rolling stock."

Is it not a fact that, in adopting that form and in using that language in that assessment, you simply followed the identical language used in the State constitution?

A. It is a fact that we did follow it. I always claimed myself that each one of those items should have been values.

Q. In using, in the assessment of 1887, against the Central Pacific Railroad Company, the language as follows: "The assessment of the franchise, roadway, road-bed, rails and rolling stock," did you

not intend to use that expression for the express purpose of following the language of the State constitution?

374 A. That was one of the purposes; yes, sir.

Q. And that in fixing the value which you assigned to the property represented by those words, you only intended to include the property which was legally assessable under the State constitution?

Objected to by counsel for defendant as incompetent, and calling for the opinion of the witness.

The objection was overruled by the court, to which ruling defendant then and there duly excepted.

A. I intended to assess it in accordance with law—that is it. As to whether it was legal or illegal had to be decided.

Mr. FOULDS:

Q. Now, in speaking of the Federal franchise and the value of it, I did not quite understand you. Did I understand you to say that it had no value, or that it had no value which you could assess?

A. I said that was Mr. Ryan's contention, not mine.

Q. That it had no value which could be assessed; but you did not wish to be understood as saying that it had no value whatever?

A. I did not say that was my impression, but that it was the contention of the railroad people.

Q. Well, what was the exact contention? That it had no value whatever, or that it had a value, but that you could not assess it?

375 A. Both; that it had no value you could get at, and also, that it had no assessable value; that it was a right of the company which could not be assessed.

The COURT:

Q. That is to say that it had no value; but, if it had a value, it could not be assessed?

A. Yes, sir.

Attorney General HART:

Q. Mr. Morehouse, you spoke of Mr. Ryan and some other members of the railroad company appearing before the board in 1887 on behalf of the company?

A. For the year.

Mr. FOULDS:

Q. Well, now, did the testimony of the witnesses, who appeared before you on behalf of the railroad company, conflict as to their estimate of value, with the statement which was filed by Mr. Ryan with you, and which had been introduced in evidence?

A. The answer introduced by the railroad company themselves.

Q. Was it in support of the statement of Mr. Ryan, or in contradiction?

A. Usually in support of the statements. In some particulars, we might have had a different view.

Q. But generally in support of the statement?

A. Generally in support of it.

Q. Now, did you take any evidence of any kind before your board in consequence of which you fixed a higher value upon the property than the railroad company set forth in their statements?

A. I think that in every case—I don't think you will find a case where we do not put it higher than they estimated it.

376 Q. Well, what I am asking you is this: If you increased that value over their estimate, upon hearing evidence to establish the fact that the property was of a higher value than they estimated it to be; or, if you simply exercised your own judgment, without hearing evidence upon which to base your judgment?

A. Well, I did not catch the meaning of that.

Q. Well, I mean this: Here the railroad company have put in a statement by Mr. Ryan, their agent, in which the railroad properties were valued at a certain figure—we will say $12,000,000—giving the length of the road, the number of engines and cars, the estimated value of each kind and the total valuation. In the case of the Central Pacific, we will say that the value was twelve millions and some-odd dollars. Now, in making that estimate for the same year, you assess it at $18,000,000.

A. Yes, sir.

Q. Nearly six millions more than the railroad company estimated it to be. Now, upon what did you base that increase of value over the estimate; did you hear evidence, or did you use your discretion?

A. We used our judgment; but, of course, our judgment was backed up by such evidence as we could get from the railroad people and other sources.

Q. Now, Mr. Morehouse, in making that increase of value over and above the railroad people's estimate, were you not influenced to some extent at least, by a consideration of the value

377 of these Federal franchises, that this railroad company held?

A. I can answer that in no better way than to say what we assessed in 1888, after 1887. We did include it, as I have sworn, in 1887. In 1888 we did not include the Federal franchise. We left it out. We differed with them on values on a great many things, but when we got through figuring we arrived at a lump sum, as we intended to do. But my impression was that they ought to have been valued separately.

Attorney General HART:

Q. Mr. Morehouse, you assessed the value of the road in 1887 at what figure per mile?

A. Well, the motions were made at a round sum, $18,000,000. I could not tell you the exact figure that they brought per mile.

Q. Well, now, did you assess that at the same value, proportionately, as other property in the State?

A. That is the supposition, sir. I would like to qualify that statement. What property do you mean? All property?

Q. Yes.

A. We might not. I don't think I was in favor of assessing it for $18,000,000. I think $18,000,000 was higher——

Q. Do you know what it cost to build that road?

A. I have talked that over and heard evidence a great deal with regard to it.

Q. Well, did you have any evidence before the board with regard to building this road?

378 A. Yes, sir; every mile of it, nearly.

Q. Well, what was the cost?

A. Different sums. I cannot call to mind now.

Q. Well, 1887, the Central Pacific railroad?

A. In some places a hundred thousand, and a hundred and fifty thousand dollars—as high as that.

Q. And what was the lowest?

A. In some places as low as six or seven thousand dollars.

Q. And that did not include the rolling stock?

A. No, sir.

Q. You don't know what you valued the road at per mile in 1887?

A. No, sir; I don't remember distinctly what it was.

Q. Well, you made your value much less than what it cost to build the road, did you not?

A. I presume so; in some portions of it, and in some portions a great deal more.

Q. Well, do you know what portions now?

A. Yes, sir; I think the San Joaquin, or take any of the level portions.

Q. I am talking of the Central Pacific.

A. Well, I am speaking of the Central Pacific, in the San Joaquin valley. The Central Pacific runs to Goshen.

Q. It runs to Goshen?

A. Yes, sir.

379 Q. Well, then, as a matter of fact, your assessments on this road—you considered that it was a fair assessment?

A. I thought they were high. If you will look at the record you will find——

Q. Well, was not the whole assessment of the State high that year?

A. Some portions of it were and some were not. Some had to be raised.

Q. Well, I mean after you got through that, you would consider it low?

A. Well, I would not say that. There were five of us. What I wanted to do might not carry. Now you are asking for my opinion, and my opinion as regards those things is apt to vary a little, because I did not have it all my way.

Q. Now, how much did you allow for the State franchise in that assessment?

A. Well, that, sir, is a hard question to answer—what we allowed for the State franchise, or what we allowed for the Federal franchise, and it is also a hard question to answer what we allowed for the road-way or right of way.

Q. Was there any rolling stock?

A. Yes, we figured that; but I could show you at any time the sheets of paper at the office. I figured them forty different ways and then came to a conclusion afterwards.

(By Mr. FOULDS:)

Q. Mr. Morehouse, you figured upon the income of the road—on its business—the whole extent?

A. Every conceivable way you could imagine. Mr. Dunn
380 had a theory of his own, and Mr. Markly had another theory, and we all figured it on those different theories, and tried to arrive at some estimate.

Q. The income of the road was the income derived from all its franchises, whatever they might be?

A. Yes, sir; and Mr. Dunn's idea was that we ought to take the selling values of the stock and subtract the debts from the contingent property, and I suppose that would include the Federal franchise. That was his idea, but we did not agree with him on it.

E. W. MASLIN, called and sworn as a witness for defendant, testified:

By Mr. FOULDS:

Q. Mr. Maslin, what official connection have you now, or heretofore had, with the State board of equalization of this State?

A. I was secretary of the State board from about April, 1880, until about March, 1891.

Q. As such you were present at the meetings of the board?

A. I was.

Q. And kept the minutes and records?

A. I did.

Q. Of their proceedings?

A. Yes, sir.

Q. Do you remember, Mr. Maslin, the meeting of the board at which the railroad properties of the Central Pacific Railroad Company were assessed in the year 1887?

A. I remember the assessment and the discussion.

381 Q. Were you present at that meeting?

A. I was.

Q. Can you state to the court what elements of value were considered by the board in making their estimate of the total values of the properties of this company for that year?

A. I think I can, but it would be—just leave it. I think I can.

By Mr. FOULDS:

Q. How do you derive your knowledge of such elements of value?

A. From the history of the assessments of this railroad since 1880,

my relation to it in respect to the assessment of the franchise and the personal property; my conversation with many members through those eight years, or eleven years; the knowledge I have of how two members arrived at their conclusions, and the knowledge that I think I have of how three members arrived at their conclusions.

Q. Did you hear the evidence that was taken before the board?

A. I did.

Q. Well, now, from the various sources of knowledge which you have enumerated, please state to the court what elements were taken into consideration by the State board of equalization in making the assessment of this company for the year 1887?

Objected to by counsel for plaintiff on the ground that the question is incompetent, irrelevant and immaterial; that it is incompetent, because it calls for the opinion of the witness as to the
382 feelings and judgments of the members of the board in making a vote, or taking a vote, on the assessment, and in fixing the value; and on the further ground that the witness is not definite or certain in his answer as to his knowledge of the matter, as he thinks that he knows as to three, and he is not positive as to any of them; that the prior years and the history of the taxation cannot be considered for the purpose of disclosing what judgment the board acted upon in making the assessment of 1887, and that it does not appear how much of his own knowledge is derived from documents filed or from evidence taken, and that therefore it leaves the judgment of the witness as to the extent of his knowledge indefinite and uncertain; that the question should not be answered, on the ground that the witness was not a member of the board, and therefore any opinion or judgment that he forms or may have had in the premises cannot be exercised and was not exercised then, and cannot be testified to now for the purposes of determining upon what the State board of equalization, in levying the taxes of 1887, for the Central Pacific Railroad Company acted; and it is incompetent, because it would vary the record.

The objection was sustained by the court, to which ruling defendant then and there duly excepted.

By Mr. FOULDS:

Q. Did you hear any conversation between the members of the State board of equalization during the meeting when the as-
383 sessment of this company was made for the year 1887, with reference to the elements that they proposed to and did include in the assessment?

Objected to by plaintiff's counsel on the same grounds as stated in the objection to the next preceding question, and for the reason that it will be hearsay, given by a member of the board not speaking under oath, and he may have spoken one thing and acted entirely differently; and it applies also to a subsequent year, and would even be collateral as to the taxes of 1888, and certainly would be collateral as to taxes of 1887; also it has been offered for the pur-

A. Well, that, sir, is a hard question to answer—what we allowed for the State franchise, or what we allowed for the Federal franchise, and it is also a hard question to answer what we allowed for the road-way or right of way.

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380 had a theory of his own, and Mr. Markly had another theory, and we all figured it on those different theories, and tried to arrive at some estimate.

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Q. As such you were present at the meetings of the board?

A. I was.

Q. And kept the minutes and records?

A. I did.

Q. Of their proceedings?

A. Yes, sir.

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A. I remember the assessment and the discussion.

381 Q. Were you present at that meeting?

A. I was.

Q. Can you state to the court what elements of value were considered by the board in making their estimate of the total values of the properties of this company for that year?

A. I think I can, but it would be—just leave it. I think I can.

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my relation to it in respect to the assessment of the franchise and the personal property; my conversation with many members through those eight years, or eleven years; the knowledge I have of how two members arrived at their conclusions, and the knowledge that I think I have of how three members arrived at their conclusions.

Q. Did you hear the evidence that was taken before the board?

A. I did.

Q. Well, now, from the various sources of knowledge which you have enumerated, please state to the court what elements were taken into consideration by the State board of equalization in making the assessment of this company for the year 1887?

Objected to by counsel for plaintiff on the ground that the question is incompetent, irrelevant and immaterial; that it is incompetent, because it calls for the opinion of the witness as to the
382 feelings and judgments of the members of the board in making a vote, or taking a vote, on the assessment, and in fixing the value; and on the further ground that the witness is not definite or certain in his answer as to his knowledge of the matter, as he thinks that he knows as to three, and he is not positive as to any of them; that the prior years and the history of the taxation cannot be considered for the purpose of disclosing what judgment the board acted upon in making the assessment of 1887, and that it does not appear how much of his own knowledge is derived from documents filed or from evidence taken, and that therefore it leaves the judgment of the witness as to the extent of his knowledge indefinite and uncertain; that the question should not be answered, on the ground that the witness was not a member of the board, and therefore any opinion or judgment that he forms or may have had in the premises cannot be exercised and was not exercised then, and cannot be testified to now for the purposes of determining upon what the State board of equalization, in levying the taxes of 1887, for the Central Pacific Railroad Company acted; and it is incompetent, because it would vary the record.

The objection was sustained by the court, to which ruling defendant then and there duly excepted.

By Mr. FOULDS:

Q. Did you hear any conversation between the members of the State board of equalization during the meeting when the as-
383 sessment of this company was made for the year 1887, with reference to the elements that they proposed to and did include in the assessment?

Objected to by plaintiff's counsel on the same grounds as stated in the objection to the next preceding question, and for the reason that it will be hearsay, given by a member of the board not speaking under oath, and he may have spoken one thing and acted entirely differently; and it applies also to a subsequent year, and would even be collateral as to the taxes of 1888, and certainly would be collateral as to taxes of 1887; also it has been offered for the pur-

pose of impeachment. The foundation has not been laid by asking the proper questions.

The objection was sustained by the court, to which ruling defendant then and there duly excepted.

By Mr. FOULDS:

Q. At the time that the assessment of 1887 was made by the State board of equalization upon the property of the Central Pacific Railroad Company, what was said and done at the meeting of the State board of equalization on that day in your presence?

Counsel for plaintiff objected to the question on each ground before specified; and, on the further ground, that the record is the best evidence of what was done at that meeting.

The objection was sustained by the court, to which ruling defendant then and there duly excepted.

By Mr. FOULDS:

Q. Now, in view of the ruling of the court on this subject,
384 we now offer to prove by this witness that from the time of the organization of the State board of equalization in 1880 down to and including the year 1887, that board had every year considered the value of the Federal franchise—that is, the franchise derived from the United States by the acts of Congress of the Government of the United States, belonging to and owned by the Central Pacific Railroad Company, as an element of value in assessing the total value of the property of that railroad company; and that in 1888, in consequence of the decision of the Supreme Court of the United States upon the subject, the State board of equalization for the first time ceased to consider this Federal franchise as an element of value, and hence reduced their valuation by the sum of three million dollars on the Central Pacific Railroad Company's property.

The offer was disallowed by the court, to which ruling defendant then and there duly excepted.

By Mr. FOULDS:

Q. I will ask you, Mr. Maslin, if the State board of equalization, in the year 1887, in making its assessments of the value of the property of the defendant, as shown by the record of the assessment in evidence in the action now before the court, made their assessment for the full value of the property, without any reservation or deduction, or whether they deducted the mortgage debts that were then subsisting upon the particular property that they were assessing.

A. They did not deduct the mortgage.

385 Defendant's counsel here offered and read in evidence the whole of Plaintiff's Exhibit 2, to wit: the duplicate record of the apportionment of railway assessments by the State board of equalization, and also the minutes of said State board of equaliza-

tion for the year 1887, from which it appears that no apportionment was made by the State board of equalization other than that hereinbefore appearing.

Defendant's counsel here offered in evidence certified copies of minutes of certain of the proceedings of the board of supervisors of the county of Alameda, of date October 3, 1887, which were admitted in evidence and marked "Exhibit L," and are as follows:

DEFENDANT'S EXHIBIT L.

Adjourned regular meeting.

State and County Tax Levy.

The following resolution was then read and unanimously adopted on motion of Mr. Pelonze, viz:

Resolved, That the tax levy in Alameda county, California, for State and county purposes for the year 1887 be and the same is hereby fixed as follows:

386

For the State revenue fund on each $100 of taxable property in said county	60.8 cents.
For the county general fund on each $100 of taxable property in said county	17 cents.
For the county infirmary fund on each $100 of taxable property in said county	4.5 cents.
For the county school fund on each $100 of taxable property in said county	11.5 cents.
For the county building fund on each $100 of taxable property in said county	5.5 cents.
For the bond fund (1883) on each $100 of taxable property in said county	.7 cents.
Total	$1.00

And be it further resolved, That a tax of 30 cents on each $100 of taxable property be and the same is hereby levied for road purposes upon all property in said county situated outside of incorporated cities and towns.

Emery School District Tax.

The following resolution was then read and unanimously adopted, viz:

Resolved, That this board levy and it does hereby levy a district school tax for the year 1887 of 27.4 cents on each $100 of the taxable property in Emery school district in the county of Ala-
387 meda, for the purpose of paying the annual interest on the bonds of said district due July 1, 1888, and to redeem 7 of said bonds at the same time.

Sunol Glen School District Tax.

Resolved, That this board levy, and it does hereby levy, a district school tax for the year 1887 of 11 cents on each $100 of the taxable property in Sunol Glen school district in the county of Alameda, for the purpose of paying the annual interest on the bonds of said district due in 1888.

Also certified copy of minutes of a portion of the proceedings of the board of supervisors of the county of Butte, which were admitted in evidence and marked "Exhibit M," as follows, to wit:

DEFENDANT'S EXHIBIT "M."

Journal of the board of supervisors.

OCT. 3, 1887.

This being the day fixed by law for fixing the rate of taxation for State and county purposes for the fiscal year, 1887–1888, the board of supervisors now fix and establish the rate as follows:

For State	taxes,	.608	cents—sixty and eight-tenths	cents.
" county G.	"	.38	" —thirty-eight	"
" school fund	"	.22	" —twenty-two	"
" road	"	.352	" —thirty-five and two-tenths	"
" bond redemption		.02	" —two	"
" bond interest		.02	" —two	"
		$1.60	—one dollar and sixty	"

388 Therefore it is ordered that the tax levy for Butte county for the fiscal year 1887–1888 be and the same is hereby fixed at one dollar and sixty cents ($1.60) on each one hundred dollars.

It is ordered that a special school tax be and the same is hereby levied in Oroville school district, and the rate of said levy is hereby fixed at 26 cents on each one hundred dollars taxable property in said district.

It is ordered that a special school tax be and the same is hereby levied in Chico school district and the rate of said levy is hereby fixed at 12½ cents on each one hundred dollars taxable property in said district.

It is ordered that a special school tax be and the same is hereby levied in Nelson school district, and the rate of said levy is hereby fixed at 11 cents on each one hundred dollars taxable property in said district.

It is ordered that a special school tax be and the same is hereby levied in Dockery school district, and the rate of said levy is hereby fixed at 9 cents on each one hundred dollars taxable property in said district.

It is hereby ordered that a special school tax be and the same is hereby levied in Dayton school district, and the rate of said levy is

hereby fixed at 3 cents on each one hundred dollars taxable property in said district.

It is ordered that a special school tax be and the same is hereby levied in Paradise school district, and the rate of said levy
389 is hereby fixed at 70 cents on each one hundred dollars taxable property in said district.

The State board of equalization having fixed the assessment of the franchise, roadway, road-bed, rails and rolling stock of the Central Pacific Railroad Co., in the county of Butte, at the sum of $1,125,782, and having fixed the length of said road in said county at 45 miles.

Now, therefore, in accordance with section 3665 of the Political Code of the State of California, it is ordered and the board of supervisors of said county do now state and declare that the length of the main track of said railroad in said county is 45 miles and the assessed value thereof per mile is $25,017.37.

That the number of miles of said track in the city of Chico is ½ of one mile and the assessed value thereof is $12,508.68.

That the number of miles of said track in the t'p of Chico is 19⅜ miles and the assessed value thereof is $484,711.54.

That the number of miles of said track in the township of Dayton is 9⅛ miles and the assessed value thereof is $228,283.50.

That the number of miles of said track in the t'p of Hamilton is 10¼ miles and the assessed value thereof is $256,428.04.

That the number of miles of said track in the t'p of Gridley is 6¼ miles and the assessed value thereof is $156,358.56.

That the number of miles of said track in Manzanita school district is 2 miles and the assessed value thereof is $50,034.74.

390 That the number of miles of said track in Gridley school dist. is 4¼ miles and the assessed value thereof is $106,323.12.

That the number of miles of said track in Hamilton school district is 3¼ miles and the assessed value thereof is $81,306.45.

That the number of miles of said track in Floral school dist. is 2½ miles and the assessed value thereof is $62,543.42.

That the number of miles of said track in Nelson school dist. is 1½ miles and the assessed value thereof is $37,526.05.

That the number of miles of said track in Dockery school district is 6 miles and the assessed value thereof is $150,104.22.

That the number of miles of said track in Butte Valley school dist. is 5¼ miles and the assessed value thereof is $131,341.19.

That the number of miles of said track in York school dist. is 1¾ miles and the assessed value thereof is $43,780.39.

That the number of miles of said track in Chico school dist. is 4¾ miles and the assessed value thereof is $118,832.50.

That the number of miles of said track in Webster school dist. is ¼ of one mile and the assessed value thereof is $6,254.34.

That the number of miles of said track in Meridian school district is 5½ miles and the assessed value thereof is $137,595.53.

That the number of miles of said track in Rock Creek school dist. is 2½ miles and the assessed value thereof is $62,543.42.

391 That the number of miles of said track in Pine Creek school district is 3½ miles and the assessed value thereof is $87,560.79.

That the number of miles of said track in Rose school district is 2 miles and the assessed value thereof is $50,034.74.

Also certified copy of the minutes of a portion of the proceedings of the board of supervisors of the county of San Joaquin, which were admitted in evidence and marked "Exhibit N," and are as follows, to wit:

DEFENDANT'S EXHIBIT "N."

CHAMBER OF THE BOARD OF SUPERVISORS,
SAN JOAQUIN COUNTY, CALIFORNIA,
MONDAY, *October 3d*, 1887.

The board met pursuant to adjournment.
Present: Supervisor A. Leitch, chairman.
" " N. McK. Carson.
" " Levi H. Nicewonger.
" " Wm. Inglis.
" " Alex. Mayberry, and
" " C. W. Yolland, clerk.

In the matter of fixing the rate of tax of State, county and school purposes, for the fiscal year commencing July 1st, A. D. 1887.

The State board of equalization having, on the 17th day of September, A. D. 1887, fixed the sum of sixty & $\frac{8}{10}$ cents (for general fund, 38.5 cents; school fund, 19 cents; sinking fund, 2.3 cents; State university, 1 cent; total, 60.8 cents) upon each one
392 hundred dollars, as the rate of State tax to be levied and collected for the fiscal year commencing July 1st, A. D. 1887, and this being the day provided by law on which the board of supervisors of each county must fix the rate of county taxes, and levy the State, county and school district taxes upon the taxable property in said county or school districts. The board of supervisors of San Joaquin county, State of California, this day levied a tax of sixty & $\frac{8}{10}$ (60.8) cents upon each one hundred dollars of property assessed in the county for State purposes.

The board then fixed the rate of county taxes at fifty-nine $\frac{2}{10}$ cents on each one hundred dollars of taxable property in the county of San Joaquin, outside of the city of Stockton (an incorporated city), and fixed the rate of county taxes in and for the city of Stockton at thirty-nine and $\frac{2}{10}$ cents upon each one hundred dollars of taxable property within the city of Stockton, and levied the county taxes upon the taxable property of said county of San Joaquin and said city of Stockton, State of California, and designated the number of cents and fractions thereof on each one hundred dollars of property levied for each fund as follows, to wit:

Inside of the city of Stockton (an incorporated town):

County general fund, fifteen cents	15
County school fund, fourteen "	14
Indigent sick fund, five "	05
Bond interest fund, two $\frac{2}{10}$ "	02.2
Bond redemption fund, three "	03

393 For the county of San Joaquin outside of incorporated towns:

County general fund, fifteen cents	15
County school fund, fourteen "	14
County road fund, twenty "	20
Indigent sick fund, five "	05
Bond interest fund, two $\frac{2}{10}$ "	02.2
Bond redemption fund, three "	03

The board of supervisors of San Joaquin county, State of California, being notified that the following sum had been voted on by the citizens of the following-named school district of San Joaquin county for the purpose of building and furnishing a school-house in the respective district, to wit: Douglas school district, five hundred dollars.

The board of supervisors of San Joaquin county, California (in accordance with section 1837, amendments of the Political Code of California of 1880), levied a tax for building a school-house and furnishing the same in the aforesaid school district, voting such tax and fixed the following as the rate of taxation in said school district as follows, to wit: Douglas school district; forty cents on each one hundred dollars of taxable property in said district.

Also certified copy of minutes of a portion of the proceedings of the board of supervisors of the county of Santa Clara, of date of October 3, 1877, which were admitted in evidence and marked "Exhibit O," and are as follows, to wit:

394 DEFENDANT'S EXHIBIT "O."

* * * * * * *

On motion it is ordered that the following rate of taxation for State and county purposes for the fiscal year 1887 be and the same is hereby levied upon each one hundred dollars of the assessed valuation of the property in said county, to wit:

For State purposes	$0.60.8
For road purposes on all property outside of incorporated cities and towns	.30
For school purposes	.09
Current expense fund	.06
Salary fund	.04
Redemption bond fund 1876	.009
" " " 1883	.026
" " " 1885	.015
Refunding W. P. R. R. bonds '85	.015
Refunding Lick Avenue bonds	.037
Total	$1.20

It was also, on motion, ordered that the following tax — and it is hereby levied in the following-named school districts in said county of each $100 *dollars* of taxable property in each of said school districts for the payment of interest on bonds issued by the board of supervisors for certain of such districts and for the purpose of
395 raising, building and other funds in certain other districts, as follows, to wit:

Berryessa	$0.06
Bocker	.04
Halls Valley	.30
East San José	.18
Los Gatos	.27
Summit	.40
Pala	.02
Oak Grove	.07
Midway	.19

Also certified copy of certain minutes of a portion of the proceedings of the board of supervisors of the county of Shasta, which were admitted in evidence and marked "Exhibit P," and are as follows, to wit:

DEFENDANT'S EXHIBIT "P."

Board of Supervisors, October Term, 1887.

Board of supervisors of Shasta county met at 10 o'clock, a. m., October 3, 1887, pursuant to adjournment.

Present, L. T. Dryden, chairman. Supervisors Litsch, Jones, Townsley and Zumalt, and A. F. Ross, clerk.

Rate of Taxation.

It is hereby ordered that the rate of tax levied on the taxable property in the county of Shasta for the fiscal year 1887–'88 be as follows:

396 *State Fund.*

For general fund	38.5	on the	$100
" the school fund	19.0	"	"
" interest and sinking fund	2.3	"	"
" university	1.0	"	"
Total State rate of tax	60.8	"	"
For the county general fund	63.0	"	"
" " " hospital "	04.2	"	"
" " " bond "	16.0	"	"
" " " school "	50.0	"	"
" " " road "	31.0	"	"
Total State and county rate	$2.25.0	"	"

Shasta School District Special Tax.

It is hereby ordered that the additional rate of taxation on the taxable property in Shasta school district, county of Shasta, be .08 on each $100.

Redding School Dist. Bond and Special Tax.

It is hereby ordered that the additional rate of taxation on the taxable property in Redding school district, county of Shasta, be 51 cents on each $100.

Anderson School Dist. Bond Tax.

It is hereby ordered that the additional rate of taxation on the taxable property in the Anderson school district be 28 cts. on each $100.

Bald Hills School Dist. Bond Tax.

It is hereby ordered that the additional rate of taxation on
397 the taxable property in the Bald Hills school district, county of Shasta, be 18 cts. on each $100.

Mistletoe School Dist. Bond Tax.

It is hereby ordered that the additional rate of taxation on the taxable property in the Mistletoe school district, county of Shasta, be $1.42 on each $100.

Antelope School Dist. Bond Tax.

It is hereby ordered that the additional rate of taxation on the taxable property in Antelope school district, county of Shasta, be 65 cts. on each $100.

Churntown School Dist. Special Tax.

It is hereby ordered that the additional rate of taxation on the taxable property in Churntown school district, county of Shasta, be 30 cts. on every $100.

Fall River Mills School Dist. Special Tax.

It is hereby ordered that the additional rate of taxation on the taxable property in Fall River Mills school district, county of Shasta, be 30 cts. on every $100.

Also certified copy of certain minutes of a portion of the proceedings of the board of supervisors of the county of Siskiyou, which were admitted in evidence and marked "Exhibit Q," and are as follows:

DEFENDANT'S EXHIBIT "Q."

OCTOBER 3, 1887—6.30 p. m.

Board met pursuant to adjournment.

Present: J. Jacobs, chairman, H. J. Sarter, J. E. Harmon,
398 N. H. Smith, E. Reichman and A. M. Burrows, clerk.

This being the day fixed by law for leving rate of taxation, the board proceeded to make the following orders relating thereto.

It is hereby ordered that the following rates of taxation be fixed for the fiscal year of 1887 and 1888.

For the State fund on each one hundred dollars' worth of taxable property, 60.8 cts.

For the county general fund on each one hundred dollars' worth of taxable property, 40 cents.

For the road fund on each one hundred dollars' worth of taxable property, 15 cents.

For the county school fund on each one hundred dollars' worth of taxable property, 30 cents.

For the bond fund on each one hundred dollars' worth of taxable property, 8.2 cents.

For the revolving fund on each one hundred dollars' worth of taxable property, 1 cent.

Making a total of $1.55 on each $100 of taxable property for State and county purposes.

For the Scott Valley school bond fund on each one hundred dollars' worth of taxable property, 45 cents.

For the Cottonwood school bond fund on each one hundred dollars' worth of taxable property, 25 cents.

For the Etna school bond fund on each one hundred dollars of taxable property, 22 cents.

Due notice having been received from the trustees of
399 Hovey school district that an election had been held in said district, according to law, on the question of voting a special school tax in said district, sufficient to raise the sum of $150.00 for school purposes, and that at such election the requisite majority voted in favor of such tax:

Now, therefore, it is hereby ordered that a special school tax of 45 cents on each one hundred dollars of taxable property in said Hovey Gulch school district be levied for the year 1887–1888.

It is hereby ordered that 35 per cent. of the road tax for 1887–1888 be set apart for the general road fund.

It is hereby ordered that the assessments of the Central Pacific railroad, the rolling stock of the Southern Pacific Company and the Pullman Palace Car rolling stock for 1887–1888 as the same is made by the State board of equalization be placed upon the assessment-roll for said year in accordance with the provisions of section 3665 of the Political Code in the following proportions:

In McCloud road district			24.50 miles
" Butte " "			22.54 "
" Yreka " "			6.50 "
" Table Rock " "			2.00 "
Total number of miles in Siskiyou county			55.54 "

Also certified copy of certain minutes of a portion of the
400 proceedings of the board of supervisors of the county of Stanislaus, admitted in evidence, marked "Exhibit R," and which are as follows, to wit:

DEFENDANT'S EXHIBIT "R."

In board of supervisors of the county of Stanislaus, State of California.

MONDAY, *October 3rd*, 1887.

The board of supervisors of the county of Stanislaus, State of California, met in pursuance of the provisions of section 3714 of the Political Code of this State, this 3rd day of October, 1887, and there *was* present:

A. W. South, chairman; E. E. Underwood, L. B. Walthall and G. W. Toombs, supervisors; and E. D. McCabe, clerk.

Absent, Supervisor Snow.

In the matter of providing revenue for State, county and school district purposes, for the fiscal year ending June 30th, 1888.

The board of supervisors of the county of Stanislaus do order as follows:

Under and in pursuance of the provisions of subdivision 13 of section 25 of an act of the legislature of the State of California entitled, "An act to establish a uniform system of county and township governments." Approved March 14, 1883, and as provided by section 3714 of the Political Code of said State and in conformity thereto, there is hereby levied for State purposes for the fiscal year ending
June 30th, 1888, upon all property in the county of Stan-
401 islaus except such property as is by law exempt from taxation, the sum of sixty and eight-tenths (60.8) cents on each one hundred ($100) dollars, valuation upon the assessment-roll of said county for the fiscal year aforesaid.

Under and in pursuance of the aforesaid act of the legislature, and as provided by said section 3714 of the Political Code of this State, and in conformity thereto, there is hereby levied a tax for county purposes for the fiscal year ending June 30th, 1888, upon all property in the county of Stanislaus, excepting such property as is by law exempt from taxation, the sum of forty-eight and two-tenths (48.2) cents upon each one hundred ($100) dollars, valuation upon said taxable property upon the assessment-roll for said fiscal year, and the same is hereby apportioned to the funds and accounts designated as follows, viz:

County general fund, twelve (12c.) cents.

County salary fund, twelve (12c.) cents.
County school fund, fifteen (15c.) cents.
County hospital fund, three (3c.) cents.
Bond redemption and interest fund, two and two-tenths (2.2c.) cents.
County bond fund, four (4c.) cents.
And in addition thereto there is hereby levied upon all the property in said county, except such property as is within the corporate limits of the city of Modesto, the sum of eleven (11c.) cents upon each one hundred ($100) dollars, valuation of such property
402 for the purpose of a road fund. Making a total county and State tax upon property without the limits of the city of Modesto of one dollar and twenty ($1.20) cents and within such limits of one dollar and nine ($1.09) cents.
And in addition thereto and in pursuance of section 1837 of the Political Code, and in accordance with the certificates of the trustees of the following-named school districts, there shall be and is hereby levied for school purposes upon the property in Modesto school district the sum of thirteen cents (13c.) upon each one hundred dollars ($100) valuation of the property of said district.
In Turlock school district the sum of six — (6c.) upon each one hundred ($100) dollars valuation of the property of said district.
In Canal school district the sum of seventy cents (70c.) upon each one hundred dollars ($100) valuation of the property of said district.
In Haight school district the sum of eight — (8c.) upon each one hundred dollars ($100) valuation of the property of said district.
In Emery school district the sum of eleven cents (11c.) upon each one hundred dollars ($100) valuation of the property of said district.
In White Oak school district the sum of twenty cents (20c.) upon each one hundred dollars valuation of the property of the said district, and in addition thereto and in pursuance of the provisions of section 1887 of the Political Code, there is hereby levied for the year 1887 upon the taxable property of Oakdale school district, for
403 the purpose of paying the interest and principal of the bonds of said district remaining unpaid, the sum of thirteen — (13c.) upon each one hundred dollars valuation of the property of said district.
And in Modesto school district, for the purpose of paying the interest and such portion of the principal of the bonds of said district as become due during said year, the sum of ten cents (10c.) upon each one hundred dollars valuation of the property of said district.
And in Dry Creek school district, for the purpose of paying the interest and such part of the principal of the bonds of said district as become due during the said year, the sum of twenty cents (20c.) upon each one hundred dollars valuation of the property of said district.

Also certified copy of certain minutes of a portion of the proceed-

ings of the board of supervisors of the county of Yuba, which were admitted in evidence, marked "Exhibit S," and are as follows, to wit:

DEFENDANT'S EXHIBIT "S."

MARYSVILLE, CALIFORNIA, *Oct.* 3, 1887.

At a meeting of the board of supervisors of Yuba Co., held on the above date, among other the following business was transacted:

Resolved, That the tax rate for State and county purposes for the year 1887–'8 be fixed as follows:

404	State fund	60.8
	General	60
Special		1.2
Salary		17
Road		20
Int. and sinking		17
School		17
Hospital		7
	Total	$2.00

on each $100 of assessed value.

Special tax East Bear River school district to pay bonds & interest due Febr'y, 1888, 20c. on each $100 of assessed value.

Special tax Yuba school dist. of 20c. on the $100 valuation.

It further appeared from said Exhibits L, M, N, O, P, Q, R, S, that the boards of supervisors of the counties referred to therein did, on the 3rd of October, 1887, each make and cause to be entered in their minute books respectively an order declaring the length of main track of defendant's railway assessed by said State board of equalization within said counties respectively, and the assessed value per mile of said railway, as fixed by the State board of equalization, and the number of miles of track, and the assessed value of such railway lying in each city, town, township, school and road district, and lesser taxing district in said counties respectively through which defendant's railway ran, using the same mileage rate of valuation and the total mileage in the entire county
405 as fixed by the State board of equalization in estimating and making the apportionment to each of said taxing districts.

Rebuttal.

C. E. WILCOXEN, called and sworn on behalf of plaintiff, testified as follows:

By Mr. LANGHORNE:

Q. During the years 1887 and 1888 you were a member of the State board of equalization of this State, were you?

A. Yes, sir.

Q. During those years, of what members did the board consist—yourself?

A. Yes, sir; and Mr. Morehouse and Mr. Dunn.

Q. Mr. L. C. Morehouse, Mr. John P. Dunn?

A. Yes, sir; and I don't recollect——

Q. And Mr. Sloss?

A. I think in 1887, was it not Mr. John T. Gaffy?

Q. The board had a clerk, I understand, or secretary—Mr. Maslin.

A. Yes, sir.

Q. The proceedings of the board were kept by the secretary of the board?

A. They were.

Q. All action taken by the board with reference to the assessment of railroads, and, especially, with reference to the Central Pacific Railroad Company, were made matters of record either in the minutes of the board or in the assessment book of the board, were they not?

Objected to by counsel for defendant as incompetent, for
406 the reason that it has not been shown that this witness has examined all the records of the board and all the assessments, and knows what the contents of those various records are.

The objection was overruled by the court, to which ruling defendant then and there duly excepted.

A. They were.

By Mr. LANGHORNE:

Q. (Handing witness a volume endorsed "State board of equalization, June 1st, 1881.") Mr. Wilcoxen, I call your attention to pages 423, 424, 425, 426, 427, 428 and 429 of that record, under date, purporting to be proceedings of the State board of equalization on Saturday, August 13th, 1887, with reference to assessing the defendant railroad companies. Will you just look over those, please? Now, have you examined this record sufficiently; and do the minutes, signed by the secretary, E. W. Maslin, of the proceedings of the board of August 13th, 1887, truly record the acts and proceedings of the board in regard to the matters therein stated?

A. Yes. They were read and approved the following morning, always.

(The pages here referred to by counsel for plaintiff and this witness were the same as are set out at length in the evidence of C. M. Coglan herein.)

A. (continued as to previous question). There might have been a time or two they were omitted the next morning, when there was a great deal to do, but as soon as he could write them up they were read and approved.

407 Q. Now, in arriving at the valuation of these different roads, did you have before you and before the board the statement filed by the defendant?

A. Yes, sir.

Q. Now (handing the witness Plaintiff's Exhibit 6), I ask, did you

have that statement before you in arriving at the value of the property of the Central Pacific Railroad Company for the year 1887?

A. I guess we did, sir. We had them all—all that were filed.

Q. Now, in that statement, is the statement as follows: "The value of the franchise and entire roadway, road-bed and rails within this State is $12,273,785."

A. That is the Central Pacific railroad. We never assessed any franchise for the Central Pacific.

Q. You never assessed any franchise?

A. Not that year, except State franchises.

Q. Well, how about a Federal franchise?

A. We did not assess any Federal franchise.

Q. Was there any showing before the board as to what any alleged Federal franchise of the Central Pacific Railroad Company consisted of?

A. Well, I don't recollect whether there was or not.

Q. Did you assess against the Central Pacific Railroad Company for that year, as a part of its property, or otherwise, any steamboats?

A. No, sir; nor skiffs either.

408 Q. Or any culverts?

A. No.

Q. Did you assess against said company, for said year, any fences?

A. No, sir; nor any other company, while I was on the board we did not.

Q. Or any bridges?

A. No, sir; unless it was connected with the track. In some places we might assess it there.

Q. Was there any conversation between members of that board as to what appears in this?

A. Oh, conversation! Of course, there was a great deal of it.

Q. Well, how long had you been a member of the State board of equalization at the time of this meeting?

A. I guess I was elected in 1882, and I was a member——

Q. You have been present at the greater part of their meetings?

A. I never missed one in eight years.

Q. Well, were there assessed by the State board of equalization, for the year 1887, any fences or any steamboats for any of the railroads?

A. We never assessed railroad fences or any steamboats for the whole eight years I was in there.

Q. In making up and arriving at the valuation, for the purpose of assessment, and in assessing this railroad company, the defendant here, for the year 1887, did the board include in the as-

409 sessment and valuation any distances across bays and rivers in the State over which the company ran steamers in connection with their lines of railroads?

A. I never understood that we assessed across the bay here, or across the straits. I may be wrong.

Q. But, in regard to crossing bays or rivers, or anything of that

sort, was that distance considered? Take, for instance, the bay of San Francisco from San Francisco to the Oakland mole, did you assess that part of the bay as a portion of their road-bed?

Objected to by counsel for defendant as leading.

Objection overruled, to which ruling defendant then and there duly excepted.

A. No, sir; we commenced at the mole on the other side.

Cross-examination:

On cross-examination the witness testified as follows:

By Mr. FOULDS:

Q. Now, don't you know, Mr. Wilcoxen, that at all these meetings of yours, the question of franchises owned by these companies, the Central Pacific Railroad Company and the Southern Pacific Railroad Company, and derived from the Federal Government, had been constant matters of conversation and discussion among the members of the board?

A. They were, up to the time that the Supreme Court de-
410 cided that we had no right to assess them, and then we never had anything to do with them afterwards.

Q. But up to that time you considered them?

A. Yes, sir.

Q. Now, your memory is good, Mr. Wilcoxen?

A. It is not very good for two or three years.

Q. You recollect all the proceedings at the meeting of August 13th, 1887?

A. No, I do not recollect all of them in particular.

Q. Now, you stated here that the record produced here contained all of the proceedings?

A. Yes, sir, from the fact that it is our record, and we had it read every morning.

Q. Then you rely upon that fact and not upon your memory? You don't pretend to keep in your memory all the proceedings of the board on that day?

A. Not quite.

Q. Well, you don't pretend to do that?

A. No, sir.

Q. But you simply rely upon the fact that this is the record of the board, and that that record was read daily and approved?

A. Yes, sir; that is all I have to go by—the record.

Q. That is all you intend to say. That is what I supposed. Now then, Mr. Wilcoxen, you recollect the decision? Just let me show you.

Mr. LANGHORNE: I object. You don't expect a witness who is not a lawyer——.

Mr. FOULDS: I object to any interruption of my cross-examination.

411 The COURT: Before answering, Mr. Wilcoxen, wait. Proceed with your question.

Mr. FOULDS:

Q. Mr. Wilcoxen, you referred to the decision of the Supreme Court in reference to the Federal franchise; that was the case that was published. That was a decision that was rendered in the October term of 1887 by the Supreme Court of the United States, was it not?

Mr. LANGHORNE: Wait a minute before you answer that question. I object——

Mr. FOULDS: I object to this interruption.

Mr. LANGHORNE: It is unfair to the witness.

Mr. FOULDS: You have no right to inform the witness.

Mr. LANGHORNE: I am objecting to your question.

The COURT: Mr. Langhorne has a right to make his objection.

Mr. LANGHORNE: Now, if your honor please, there are two decisions. This matter was brought before the State board of equalization when the Supreme Court decided it—two years before that.

Mr. FOULDS: The gentleman is simply leading the witness by his suggestion, and I think it is highly improper that the gentleman should interrupt me and lead the witness.

Mr. LANGHORNE: Well, I don't intend that you shall take a gentleman not a lawyer and try to mix him up on a Supreme Court decision.

The COURT: You have finished your objection, Mr. Langhorne?

412 Mr. LANGHORNE: My objection is that the question asked the witness is to distinguish between a circuit court decision and a Supreme Court decision.

The COURT: You can straighten that out on redirect examination. Objection overruled.

Mr. FOULDS:

Q. The decision we refer to was the decision of the Supreme Court of the United States?

A. No, sir, it was not. It was the circuit court here.

Mr. FOULDS: You see the gentleman has led the witness.

A. No, sir, excuse me, but Mr. Maslin and Mr. Markly were down here at the time.

Q. What year was that decision rendered?

Mr. LANGHORNE:

A. In 1886.

Mr. FOULDS: Now that is going too far.

Mr. LANGHORNE: I thought you asked me.

The WITNESS: I don't recollect the year.

Mr. FOULDS: I consider this interference a perfect outrage. This is monstrous. (To the witness:)

Q. But you are certain of the court by which the decision was rendered, are you?

A. I am, from the very fact, as I stated awhile ago, that Mr.

Markly and Mr. Maslin were down here as witnesses before the court.

Q. Then, up to the time that that decision was rendered, you had regularly assessed the Federal franchises of these companies?

A. That is my recollection.

413 (The court here took a recess, and, at its afternoon session, the witness was recalled for further cross-examination and testified as follows:)

By Mr. FOULDS:

Q. What year was it that you said you became a member of the State board of equalization?

A. I guess it was 1882 or 1883;—the same time General Stoneman was elected governor.

Q. The same time that Stoneman was elected governor? And, if I understood your testimony correctly this morning, you testified that you included the value of the Federal franchise in the Central Pacific and Southern Pacific Railroad Companies' valuation of assessments until the decision of the circuit court of the United States?

A. On reflection on that, I don't believe we ever did. I have been studying on that since.

Q. What is that?

A. I say, on reflection, I don't think we ever assessed a Federal franchise.

Q. Well, you testified this morning that you did.

A. Well, I said I thought we did.

Q. But, on reflection, you say you did not?

A. Well, I don't think we did. If a man makes a mistake he certainly has a right to correct it.

Q. Well, what was that decision by the circuit court to which you referred; by whom was that rendered?

A. By the judge who died here, Sawyer. I think it was him.

414 Q. Do you remember what year that decision was rendered in?

A. Well, I should guess it was about 1886.

Q. You think it was about 1886?

A. Yes, but I ain't positive.

Q. How long was it after you became a member of the State board of equalization? How long had you been a member at the time the decision was rendered?

A. Well, I couldn't tell the exact date.

Q. Well, what is your best recollection—one year, or two years, or three or four?

A. Well, I think, as near as I can remember, it must have been about three and a half years.

Q. Would you remember the decision if you were to see it?

A. I suppose I could, but I can't read hardly.

Q. Well, could you remember the title of the case if it were recalled to you?

A. Well, let me see, and I will see if I can. I have been so afflicted since Monday that I am not myself at all.

Q. Was that a decision of Judge Sawyer or Judge Field?

A. I am not positive which.

Q. You are not positive which?

A. No, sir; I rather think, though, it was Sawyer.

Q. Was the decision by Judge Field rendered in what was called the Santa Clara tax case?

A. I cannot tell you. I have not looked at it for three years.

415 Q. And you don't remember what were the points decided in that case as you remember them?

A. Not excepting that they stated that they had no right to assess a Federal franchise.

By Mr. FOULDS:

Q. I want to know what decision you refer to.

A. I think it was in 1886. I am not positive.

Q. I want to fix some date to it. Now, Mr. Wilcoxen, I don't want to take any advantage of your position as witness on this stand. You have had time to consider your testimony since you were here before, and you have now stated that you think the Federal franchise was not assessed at all. Do I understand you correctly?

A. The Federal franchise?

Q. The Federal franchise of the railroads was never assessed at all?

A. I am not positive, but I think they were not.

Q. Now, what has occurred since you were here this morning to change your testimony from that you gave this morning to that you give now?

A. Well, I was thinking about Mr. Maslin writing and making up a report, in which he said—and we had Mr. Delmas in the case.

Q. You testified this morning, in your direct examination, Mr. Wilcoxen, did you not, that, in the year 1887 you did not assess as part of the property of the Southern Pacific Railroad and Central Pacific Railroad Companies any culverts or bridges as a part of their property?

416 A. Not that I know of, except that it might have been where there was a part of the road-bed.

Q. That you did not assess them at all?

A. Well, I said except it was that way.

Q. Well, in what way did you, or did you not, assess them?

A. I say we might have assessed some small bridges—what would be in the road-bed—but not bridges. We never assessed any bridges.

Q. Now, about culverts?

A. We never assessed any culverts that I know of.

Q. Did you assess them as part of the road-bed?

A. I suppose so, but I cannot remember exactly, sir.

Q. Well, I will call your attention to the minutes of the board of 1888. In the minutes of the State board of equalization of August

Markly and Mr. Maslin were down here as witnesses before the court.

Q. Then, up to the time that that decision was rendered, you had regularly assessed the Federal franchises of these companies?

A. That is my recollection.

413 (The court here took a recess, and, at its afternoon session, the witness was recalled for further cross-examination and testified as follows:)

By Mr. FOULDS:

Q. What year was it that you said you became a member of the State board of equalization?

A. I guess it was 1882 or 1883;—the same time General Stoneman was elected governor.

Q. The same time that Stoneman was elected governor? And, if I understood your testimony correctly this morning, you testified that you included the value of the Federal franchise in the Central Pacific and Southern Pacific Railroad Companies' valuation of assessments until the decision of the circuit court of the United States?

A. On reflection on that, I don't believe we ever did. I have been studying on that since.

Q. What is that?

A. I say, on reflection, I don't think we ever assessed a Federal franchise.

Q. Well, you testified this morning that you did.

A. Well, I said I thought we did.

Q. But, on reflection, you say you did not?

A. Well, I don't think we did. If a man makes a mistake he certainly has a right to correct it.

Q. Well, what was that decision by the circuit court to which you referred; by whom was that rendered?

A. By the judge who died here, Sawyer. I think it was him.

414 Q. Do you remember what year that decision was rendered in?

A. Well, I should guess it was about 1886.

Q. You think it was about 1886?

A. Yes, but I ain't positive.

Q. How long was it after you became a member of the State board of equalization? How long had you been a member at the time the decision was rendered?

A. Well, I couldn't tell the exact date.

Q. Well, what is your best recollection—one year, or two years, or three or four?

A. Well, I think, as near as I can remember, it must have been about three and a half years.

Q. Would you remember the decision if you were to see it?

A. I suppose I could, but I can't read hardly.

Q. Well, could you remember the title of the case if it were recalled to you?

A. Well, let me see, and I will see if I can. I have been so afflicted since Monday that I am not myself at all.

Q. Was that a decision of Judge Sawyer or Judge Field?

A. I am not positive which.

Q. You are not positive which?

A. No, sir; I rather think, though, it was Sawyer.

Q. Was the decision by Judge Field rendered in what was called the Santa Clara tax case?

A. I cannot tell you. I have not looked at it for three years.

415 Q. And you don't remember what were the points decided in that case as you remember them?

A. Not excepting that they stated that they had no right to assess a Federal franchise.

By Mr. FOULDS:

Q. I want to know what decision you refer to.

A. I think it was in 1886. I am not positive.

Q. I want to fix some date to it. Now, Mr. Wilcoxen, I don't want to take any advantage of your position as witness on this stand. You have had time to consider your testimony since you were here before, and you have now stated that you think the Federal franchise was not assessed at all. Do I understand you correctly?

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Q. Now, about culverts?

A. We never assessed any culverts that I know of.

Q. Did you assess them as part of the road-bed?

A. I suppose so, but I cannot remember exactly, sir.

Q. Well, I will call your attention to the minutes of the board of 1888. In the minutes of the State board of equalization of August

17th, 1888, which have been introduced in evidence in this case, appears the following (I want to read it, for the witness says his eyesight is poor, and I read it for his information):

"The board invited the attorney general to be present to consult with the board in reference to the assessment of railways so as to have the same conform to the decision of the United States Supreme Court lately rendered in the railroad-tax case. He recommended that the franchise of the Central Pacific Railroad and Southern Pacific Railroad Company, derived from the State, be assessed, and that the values thereof be stated separately in the record of
417 assessment; that the board assess the moles, bridges and culverts of each road separately, and in respect to certain railroad companies to declare that the steamers used in operating the same were not assessed; that is to say that the assessment should be made divided so as to show the valuation placed upon the State franchise of the Central Pacific and the Southern Pacific Companies, and upon the moles, culverts and bridges of each road assessed."

Do you recollect that circumstance?

A. I recollect very well that Mr. Johnson was there.

Q. Now, Mr. Wilcoxen, you remember that. Now, don't you also remember, on further reflection, that up to the time the board received that advice from the attorney general,—that is up to and including the assessment for the year 1888,—the board met every year, during the time that you were a member of that board, and assessed the Federal franchise of the Central Pacific Railroad Company and the Southern Pacific Railroad Company, and also the bridges and culverts, as a part of their railroad property?

A. I don't recollect of their assessing any bridges.

Q. Do you recollect that you included the bridges as a part of their property.

A. County assessors generally assess them.

Q. Well, now, you have not answered my entire question. (To the reporter:) Read the entire question to him, as I don't want to take the witness by surprise, and I want to give him an
418 abundant opportunity to reflect. (The second preceding question was read to the witness by the reporter.)

A. They may have assessed the franchise. I would not swear that they did or did not.

Q. Now, what do you say about the rest?

A. I have no recollection in the world of assessing any bridges.

Q. Well, what about culverts?

A. Well, I don't recollect any of them. They may have done it. I paid no attention to it since I have been out of office.

Q. Now, don't you know, Mr. Wilcoxen, that when the assessment was made for the year 1888 the franchise of these companies, derived from the State of California, was separately assessed, and was the only franchise assessed?

A. I do not.

Q. Don't you remember anything about that assessment?

A. I am satisfied we assessed the franchise in them.

Q. Don't you remember that, in the year 1888, the franchise of

those companies, derived from the State of California, was assessed separately in the assessment?

A. I think they were assessed, but whether they were assessed separately or not, I cannot remember.

Q. And you recollect that, in the assessment for that year, there were many other things?

A. Which year?

419 Q. 1888—that were assessed separately, that were formerly blended altogether in the assessment?

A. No, sir.

Q. You don't remember it?

A. No, sir.

Q. Mr. Wilcoxen, were you called and sworn as a witness before the assembly committee on judiciary of the assembly of the State of California?

A. I was.

Q. When they were considering railroad-tax suits and other matters, on the 23d day of February, 1889?

A. I don't recollect what date it was. I know I was summoned before them.

Q. Were you sworn, and did you testify before them?

A. I did. It was fresh in my memory then, too, at the time.

Q. Those things were fresh in your memory at the time?

A. Yes, sir.

Q. Your memory, then, on these matters, was better then than it is now, of course?

A. Yes, sir; a good deal.

Q. Do you remember who examined you at that time, what counsel?

A. I think Mr. —— —— was one of them for the railroad.

Q. Do you remember Mr. Lezynsky?

A. Yes, sir; I recollect there was such a man there. I did not know the man.

420 Q. Do you recollect that Mr. Lezynsky examined you to some extent?

A. There was two of them.

Q. I will ask you if, on the 23d day of February, 1889, at Sacramento, in the State of California, before the committee on judiciary of the assembly of the State, you were sworn and asked by Mr. Lezynsky the following questions:

Attorney General HART: Now, I object to that, that the witness should be shown the statement first, that he may examine it; and on the further ground that counsel has not specified the taxes that he had reference to; and on the further ground that it had not shown that they apply to the tax now in question before the court; further, that the testimony, which the counsel proposes now to read, is hearsay and incompetent. It was not given in any suit between the same parties to this suit and, therefore, it is incompetent in any way, shape or manner. This is not shown to be a record of it and the State was *was* not a party to that proceeding.

Mr. FOULDS: I shall show that when I come to the proper place. I am now simply asking the witness if he made a statement at another time that varies from the statement he makes here now. I ask him if, on that day, in the city of Sacramento, before the assembly judiciary committee, where he has testified he was sworn as a witness, he was asked a question by counsel, which I will read, and if he made a certain answer, which I will read.

421 A. That testimony is correct all through—the questions and the answers.

Mr. FOULDS: I will now read, for your honor's information, the question and answer upon which I propose to interrogate the witness.

By Mr. LEZYNSKY:

Q. In making this assessment, when you arrived at this valuation—in making the computation, which was a computation to arrive at these assessments—was there ever any valuation placed upon any Federal franchise, or the valuation of any Federal franchise included in the amounts, which were the amounts figured up as the valuation of these roads?

A. I always so understood it, until 1888, that we assessed the franchise.

Q. I ask you as to the Federal franchise?

A. I don't know. I don't recollect of that matter being before the board; some of the balance of the members may remember it.

Mr. DIBBLE:

Q. Your statement is that they always did assess franchises up to this last year?

A. Yes, sir; up to this last year.

Mr. LEZYNSKY:

Q. Did you assess one or more for each road?

A. As it is, I don't think they assessed but one.

Q. Was that understood to be the State franchise or the Federal franchise?

A. I could not answer that question.

The COURT: Now, gentlemen, the question is submitted, and I see that what I feared would be the result of introducing circum-
422 stantial evidence has resulted, to wit: that you would drag in a lot of testimony for years subsequent and years prior, that really would have no bearing upon this assessment for 1887 at all, and it is mixing up matters very much indeed. Now I do not propose to allow any more circumstantial evidence. You can introduce that evidence upon the year 1887, and be content with that; but I will not allow any evidence as to what the board did in 1886 or 1885, or any other year but the one in controversy. As to this particular witness the result of all this testimony is practically the same, that he don't recollect. This is partially collateral, and you cannot

impeach a witness on collateral matters. Proceed, and confine yourself to what the board did in 1887.

Mr. FOULDS: We reserve an exception.

Q. Now, you have testified, in your examination-in-chief, that in the year 1887 the State board of equalization did not assess the Federal franchise of the Central Pacific and Southern Pacific Railroad Companies: is that right?

A. Yes, sir; that is according to my recollection.

Q. Now, how do you know that they did not assess these franchises?

A. Because we talked the matter over among us there together.

Q. What was that conversation?

A. Well, it was in regard to the decision of the court, that we had no right to assess it, and, of course, I cannot remember all that I was talking about.

423 Q. Who were the members of the board with whom you discussed that matter?

A. Mr. Morehouse, Mr. Dunn and the member that died here, Mr. Sloss, Mr. Gaffy and myself.

Q. Now, I am talking about 1887.

A. Well, I cannot recollect. If it was not those, it was Mr. Gildea, Mr. Morton, Mr. Morehouse, Mr. Dunn and myself.

Q. Do you remember anything about the assessment of 1887? I want you to be clear upon the year.

A. Oh, I could not separate it from the other without going and looking at the minutes.

Q. Well, you did testify this morning that in 1887 the Federal franchises were not considered by the board?

A. Yes, sir, I did.

Q. Did you testify that?

A. Yes, sir.

Q. Now, then, how do you know that they were not considered by the board in that year, 1887?

A. Because I talked the matter over in regard to the decisions of the courts.

Q. Which decision did you refer to in that year?

A. Oh, all of them, if you want to know—all of them—two or three of them.

Q. Now, was there anything said by any member there to indicate that, so far as he was concerned, he was assessing only the State franchise and not the Federal franchise?

424 A. I think that was the expression of every member of the board, as well as I recollect.

Q. Was it the expression of Mr. Morehouse?

A. Sir?

Q. Did Mr. Morehouse express himself in that way?

A. I think he did. Mr. Morehouse can speak for himself; he is here.

Q. Was there any determination come to by the board, in joint consultation, in your presence, determining as to whether they did

or did not assess the Federal franchise of these two roads for that year, 1887?

A. Well, now, I would not be positive about it, whether it was 1887 or 1888.

Q. Well, I want to fix it.

A. Well, I cannot.

Q. You cannot be positive?

A. No, sir; but I know it was——

Q. Now, from the condition of your memory in this respect, Mr. Wilcoxen, is it not very probable that it was in 1888, just after the Supreme Court of the United States had rendered its decision?

A. I rather think it was in 1887, but as I said before, I would not be positive.

Q. You are not positive?

A. No, I am not positive.

Q. It might have been in 1888?

A. Let me see the minutes and I can tell.

Q. Well, I am referring to your memory now.

425 A. Well, I don't put my memory up against the minutes of the board of equalization.

Q. Then you cannot state from memory but what this conversation might have been in the year 1888, when you were making the assessment?

A. Now, it might have been; but I don't think it was. That is just as plain as I can answer.

Q. But you know that you discussed a recent decision of the courts of the United States, and on that decision you acted?

A. Yes, sir.

Q. Whatever year that might have been?

A. Yes, sir.

Q. Now, Mr. Wilcoxen, do you remember this: that in the deliberations of the board for 1887, you made an estimate of what was considered to be the value of the property of these companies by taking the entire length of their roads in California, and in other States, and in apportioning so much of that value as you thought should belong to the State of California in proportion to the mileage within the State?

A. No, sir; the calculation that I made of any roads were all in the State of California. I did not make any calculation of any other roads.

Q. Did you not take into consideration any property, or the franchise of any of these companies outside of the State of California?

A. I did not, but some of the other members did.

Q. Which of the other members?

426 A. Mr. Markly was about one of the best, and Mr. Gildea and Mr. Maslin and Morehouse, and I worked on the small ones.

Q. Now, in the year 1887, the assessment of the Central Pacific Railroad Company was fixed by the State board of equalization at the sum of $18,000,000. The next year, 1888, it was fixed by the

same board at $15,000,000. What was the reason of that reduction, if you know?

A. Well, I can tell you one thing, I did not vote to have it reduced. I can tell you that.

Q. You did not vote, when?

A. I did not vote in 1888 to reduce it. I believe I did vote to reduce it to $17,000,000, and I voted to reduce it to $18,000,000 because I thought it was assessed too high.

Q. Well, do you know the reason of the action of the board in making that reduction from $18,000,000 to $15,000,000?

A. I did not ask any of the board their reasons for it. I think I can prove by Mr. Ryan that I did not vote to reduce it, can't I?

JOHN P. DUNN, called and sworn as a witness for plaintiff, in rebuttal, testified as follows:

By Mr. LANGHORNE:

Q. Mr. Dunn, what State office, if any, did you occupy during the years 1887 and 1888?

A. State comptroller.

Q. Did you have any connection with the State board of equalization during those years?

A. *Ex officio* a member of that board.

427 Q. Were you present at the meeting of that board August 13, 1887?

A. I believe I was.

Q. Did a question in regard to the assessment of the State board of equalization upon the Southern Pacific and Central Pacific Railroad Companies' property for the year 1887 come before that meeting?

A. I believe that is the date. I cannot state without referring to the record.

Q. You have seen the records of the secretary of the board in regard to those assessments?

A. I believe so.

Q. Was there any action of the board at that meeting in regard to assessing or valuing what was claimed by the Central Pacific Railroad Company and the Southern Pacific Railroad Company to be a Federal franchise?

A. Not that I can recall.

Q. Was there any discussion at that meeting by the members of the board in regard to assessing what was claimed to be a Federal franchise by the Central Pacific Railroad Company?

A. Not that I can recall.

Q. Was there, to your knowledge, at that meeting, any valuation placed upon what was claimed to be the Federal franchise owned by the Central Pacific Railroad Company and the Southern Pacific Railroad Company for the purposes of assessment for the year 1887?

A. There was no such valuation placed upon the property.

428 In other words, the Federal franchise, so far as my computations are concerned, was not considered at all; nor was it

considered, so far as my knowledge goes, by any member of the board. There was no member of the board that stated that he proposed to include in that valuation a valuation for a Federal franchise, so far as my memory goes—not alone at that meeting, but at any previous meeting.

Q. You were also present, were you, at the meeting of said board at which the board assessed the properties of the Central Pacific Railroad Company and the Southern Pacific Railroad Company for the year 1888, were you not?

A. I believe I was not present when the original assessment was made, but I was present when it came up for reconsideration.

Q. Have you heard the minutes introduced in evidence here, in regard to the meeting of the board in 1888, which showed that the attorney general was called on for his opinion in regard to certain matters?

A. Yes, sir.

Q. You were present at that meeting?

A. I was not present, I think, at that meeting, but I say I have heard the minutes. You asked me if I heard the minutes read of that meeting.

Q. Well, were you present at any discussion by yourself or members of the board in regard to the assessment of what was claimed to be the Federal franchise of the Central Pacific Railroad Company and the Southern Pacific Railroad Company for the year 1888?

429 A. Prior to the date of the assessment of those properties, some time during that year, the matter was talked of considerably by the board—by the members of the board.

Q. In your presence?

A. In my presence. Well, I cannot say now whether it was at a meeting, or at the meeting-room of the board; but it was talked of by the members, and I know that I went and saw the attorney general, Mr. Johnson, at that time, and I conversed with him a number of times about it, and insisted that it was an outrage that the findings of a certain court, in the past, should show that the State board of equalization had assessed a Federal franchise, because it had simply assessed but one franchise, and that it was necessary for us, in some shape, to have the matter upon our record, in order to avoid the possibility of having such a false finding made in the future.

Q. As a matter of precaution?

A. As a matter of precaution.

Q. Well, did you want the matter shown by the record for the purpose solely as a matter of precaution?

A. Yes, sir; as a matter of precaution, just as I want the record to say that we did not assess steamboats or the four miles of water, across the bay of San Francisco, as four miles of road. Just as I want the record to say that we did not assess fences. There was no question but that we did not assess those things. Yet the

430 record that was sent up to the United States Supreme Court showed that we did.

Q. That is for prior years?

A. Yes, sir; for the years 1883 and 1884.

Q. Then the intention of making that record in 1888 to include only the State franchise, as I understand then, was solely as a matter of precaution in view of these findings, made in these former cases?

A. Yes, sir; it was my desire that it should be made that way, and it was the understanding that it was intended to accomplish that purpose by all the members of the board.

Q. You say only one franchise was assessed in 1887. Which road have you reference to?

A. To all the roads that were assessed: Central Pacific, Southern Pacific, California Pacific, Northern railway and San Pablo & Tulare.

Q. Well, which franchise did you understand that to be?

A. There was no question that it was simply the franchise to be assessed.

Q. What franchise?

A. The franchise reported to us by the railroad company. We assessed those things as they reported.

Q. Upon the blank statements furnished to the company by the board, upon which to make their report?

A. Yes, sir.

Q. Which has been offered in evidence as Plaintiff's Exhibit 6? Have you seen it?

431 A. Well, I presume I have seen it in the past. I have not seen it since I came here.

(The witness is handed Plaintiff's Exhibit 6.)

Q. Will you please examine it, Mr. Dunn. This was the sworn statement of the Central Pacific Railroad Company in regard to its property and its valuation for the year 1887, is it not?

A. It appears to be; yes, sir. I have no doubt this is the statement.

Q. Upon blanks furnished by the State board itself?

A. Yes, sir, I think these are blanks furnished by the board.

Q. Look at the language in regard to the description—the value of the franchise and the entire roadway, road-bed and rails within the State?

A. Yes, sir.

Q. What was intended by the State board to be meant and included in the expression of "franchise" in that statement against the railroad company?

Mr. FOULDS: I object, if your honor please, to the testimony as incompetent. He is asking for the opinion of the witness, and it is not the best evidence, because the paper speaks for itself.

The objection was overruled by the court, to which ruling defendant then and there duly excepted.

A. It was simply intended to be the franchise as reported by the railroad company to us.

Q. Well, when this report was filed and returned as sworn
432 to, as it appears to be, by the Central Pacific Railroad Company, returning a franchise within the State of California, what did you understand, or the board understand, to be meant by that railroad company in using that term?

Objected to by the defendant as incompetent.

Objection overruled by the court, to which ruling defendant then and there duly excepted.

A. Well, I cannot say exactly what other members of the board understood, but I know my understanding of this matter all along was that we should assess their franchise as reported to us by them.

Q. As reported to you by them.

A. Yes, sir.

Q. In other words you accepted as values—you accepted then the description that they themselves furnished of their property?

A. Yes, sir, we necessarily had to.

Q. Who represented the railroad company—the Central Pacific Railroad Company—at that meeting of August 13, 1887?

A. Well, in these tax matters, and in these assessment matters, Mr. E. B. Ryan represented the railroad company before the board at each session, and there were other gentlemen came up also, but Mr. Ryan was the principal representative.

Q. Did he, or any other representative of that railroad company, claim before the board, at any meeting held in reference to the tax or assessment of 1887, that the word "franchise," as used by
433 it in its said statement, which you hold, was ambiguous in any respect, and included anything more than the State franchise?

Objected to by the defendant as irrelevant and immaterial.

Objection overruled by the court, to which ruling defendant then and there duly excepted.

A. I do not recall the statements about it particularly, but, as to some conversations, I recall.

Q. Well, did he claim that the word franchise, as returned by them, describing their franchise, was ambiguous in any respect?

Same objection, and same ruling and exception.

A. Not that I can recall.

Q. Did he claim that the words in that statement, "franchise within the State," included any Federal franchise, which that road, the Central Pacific, claimed to have?

Objected to by the defendant as incompetent, irrelevant and immaterial.

The objection was overruled by the court, to which ruling defendant then and there duly excepted.

A. Not that I can recall. I might say, in explanation of that, that at one session, if not at a number of the sessions of the board,

Mr. Ryan stated that the franchise was simply worth what it cost to get it from each county clerk in the State—each county in the State through which the road ran. In other words, the franchise was almost valueless. It was only worth the paper and what it would cost them to get it from each county clerk's office through which the road ran.

434 Q. Well, did he say anything about a Federal franchise—make any statement at all?

A. Not that I can recall.

Cross-examination.

By Mr. FOULDS:

Q. You were well aware, Mr. Dunn, all this time, that the Central Pacific Railroad Company have valuable franchises which they have derived from the Government of the United States?

A. I believe they had, yes, sir.

Q. Now, in making up your estimate of the value of their property, you did not rely upon the statements which were furnished by Mr. Ryan as the agent of the company?

A. Not in making up the value, no, sir.

Q. You simply took the statement and made up the value?

A. Oh, I was guided to some extent.

Q. Well, in no case was there an assessment made within a very large sum, greater than the estimate which was presented to you by Mr. Ryan?

A. Well, I don't know about a large sum. I think the assessments were larger than Mr. Ryan reported.

Q. Well, it amounted to millions of dollars sometimes?

A. Well, probably so.

Q. Now, on what theory did you act, or what system did you adopt in making these assessments? You disregarded Mr. Ryan's figures, as appears from your assessment. Now, on what

435 theory did you arrive at your figures—take the Central Pacific assessment for the year 1887 for example?

A. Well, there were many elements which we took into consideration as to the value of the stock, the value of the bonds, the earning capacity of the road, its future prospects, the income for that year, the prospects for the succeeding year. There were many elements that entered into consideration; and, as I answered to the question of why we did not accept the statement of Mr. Ryan as to the valuation, we did not accept his statement with regard to any particular valuation—not alone franchise, road-bed, roadway, rails and rolling stock.

Q. Then, as I understand you, you took the entire value of the capital stock of the company—the value of its bonds—and you computed from them the value of the proportion of the road that was running in California as the basis of your estimate?

A. I stated those are one of the things that we took into consideration; not the basis of it, remember, but one of the things taken into consideration in forming our estimate.

Q. Now, the bonds of the road were issued on the entire road, were they not?

A. I understand so.

Q. And the capital stock includes the entire length of the road, whether in California or in other States?

A. Well, I understand that the bonds of the Southern Pacific are simply upon the property within this State.

436 Q. Well, the capital of the railroad company is the capital stock of the entire corporation?

A. I do not understand it to be outside of California, but entirely within the State. I think such a statement was made before our board in 1887 and 1888. I am speaking now of Southern Pacific.

Q. Well, the Central Pacific?

A. Well, I think, I have no doubt that that would cover the property outside as well as inside of the State.

Q. Well, you know, as a matter of history, Mr. Dunn, that the Central Pacific Railroad Company's capital stock includes the entire property of its road from the Pacific ocean to Ogden, in the Territory of Utah?

A. I understand that to be so; yes, sir.

Q. And now you also state, if I understand you correctly, that you considered their earnings—the earnings of the road—in computing the value?

A. Yes, sir.

Q. Now, those earnings were earnings from the entire road, whether they were in the State of California or not, were they not?

A. Yes, sir.

Q. Then, in your adopting those earnings as an element in ascertaining the value of the road, must you not necessarily have been, to some extent at least, including the value of those franchises which they operated by virtue of the grant of power from the acts of Congress which are in evidence here?

437 A. I do not think it is necessary. I do not think they are necessarily included in making up——

Q. If those acts of Congress were necessary to the operation of their entire road, and their business was derived through the franchises that they operated under *under* those acts of Congress, then must not those Federal franchises have entered to some extent into your calculations?

A. I understand the Southern Pacific railroad in this State might be operated on a State franchise.

Q. Well, you know that it operated——

A. Under both franchises, I understand.

Q. And its earnings are the earnings of the entire road? You did not segregate the earnings within the State of California?

A. Well, Mr. Foulds, if you will allow me to explain, I will simply state this to you.

Q. Well, just answer my question and then explain afterward.

A. Very well. We did endeavor to, as nearly as we could, consider the number of miles of road, considering the volume of busi-

ness in this State with the volume of business out of this State,—and that is always an element.

Q. Now, is it not a fact, Mr. Dunn, that the question of this Federal franchise was a topic in particular of constant discussion amongst the members of the State board of equalization for several years prior to 1888?

A. It was a topic of discussion, yes, sir.

438 Q. It had been raised by the railroad companies?

A. Yes, sir.

Q. And it had been discussed by the board when you assessed the franchise of these companies in years prior to 1888? You intended to and did assess them for all their corporate franchises within the State of California, did you not?

A. No, sir, I did not. No member of the board, so far as I am aware, at any time, made a motion to include the Federal franchise in these assessments.

Q. What did you assess?

A. We simply assessed the franchise of the company.

Q. Well, what corporate franchise or right derived from any government did you exclude?

A. Well, we simply assessed the franchise that the constitution required us to assess.

Q. I am not asking you for a definition of what the constitution required you to assess; but I say what corporate franchise belonging to either of these two companies did you ever exclude from consideration at any time prior to 1888?

A. Well, I excluded the Federal franchise from my consideration, in view of the fact of the decision by the Supreme Court, and in view of the fact of discussions on that question, and, if you will allow me to go back and explain, I will explain the reasons why.

Q. Well, I don't require any explanations now. You may
439 explain hereafter, if you wish. Now you say you excluded the Federal franchise, did you?

A. I say I did not include that in my estimate of the valuation put upon the property.

Q. But you did assess the entire franchise of these companies, whatever it might have been?

A. We assessed the franchise.

Q. But you cannot say you excluded the Federal franchise, can you?

A. Well, I can say that it was not taken into consideration by myself, nor was it taken into consideration, so far as I am aware, at this meeting of the board, by any member of the board, in placing a valuation upon the property.

Q. But your valuation was placed upon the figures of the earnings, which must have been the result of these franchises, both State and Federal?

A. Well, I don't know as to that. I told you that we endeavored in many ways to find out the proper valuation to put upon these roads—the earning capacity, the prospects of the road, the bonded indebtedness, etc.

Q. And you mean to tell the court now, Mr. Dunn, that you do not regard the prospects of the road, and the earning capacity of the road as in any way dependent upon these Federal franchises which they held?

A. Well, I don't know what I propose to tell the court. I simply tell you that I did not take that into consideration as an element in placing a value upon that property, no more than I took
440 into consideration placing an estimate upon the value of the California Pacific or the Northern railroad. We arrived at our conclusions, at least I did, in assessing those properties, the same as in assessing the property of the Central Pacific and Southern Pacific; and so I think all the members of the board arrived at their conclusion in the same way.

All of the evidence introduced upon the part of defendant tending to show that the Federal franchises of the defendant were assessed by the State board of equalization, was introduced subject to objection on the part of plaintiff, on the ground of incompetency, which objection was overruled, *pro forma*, by the court, with the understanding that a motion to strike out same might thereafter be made by counsel for plaintiff.

On the oral argument of the cause, the following proceedings occurred with reference to said evidence:

The COURT (to counsel for plaintiff): In relation to that parol evidence which you objected to, I anticipate a full argument upon the objection, and understand that the objection was made simply *pro forma* to save the point which would probably be renewed by motion to strike out. That motion, however, was not made.

Mr. COTTON (for plaintiff, in reply to the court): Your honor can consider that motion as renewed on my part, to strike out the testimony, upon the grounds heretofore urged; that the plaintiff moves the court to order stricken out from the record all the testimony in relation to what was considered or embraced in the assess-
441 ment made by the State board of equalization for the year 1887.

Mr. FOULDS (for defendant): Of course we resist that motion.

The COURT: Well, that will be submitted and the argument can proceed.

Thereafter, and before the court had ruled upon the motion to strike out, Mr. Cotton, of counsel for plaintiff, said to the court: Your honor, in regard to that motion that I made to strike out the oral testimony, upon conferring with my associates, as I wish to try this case with a great degree of caution—and, as if that testimony is immaterial, your honor won't regard the testimony, I will withdraw the motion to strike out, made during my argument.

The COURT (in answer): Very well.

In its written opinion, upon which the findings were based, the court, after determining as a fact, from a preponderance of the evidence before it, that the Federal franchise of defendant was not assessed or included in the assessment of the property of defendant

by the State board of equalization, for the year 1887, uses the following language:

"But if the parol evidence offered did not weigh in plaintiff's favor, and if by a preponderance of such evidence defendants could have shown that the State intended to and did include a Federal franchise in the assessment, I think the court would have to disregard it as incompetent. The effect of such parol evidence
442 would be to contradict the record, which cannot be done.

"The best and only evidence of the acts and intentions of deliberative bodies must be drawn from the record of its intentions." * * * "From both standpoints of fact and of law, the findings must be that a Federal franchise was not included in these assessments."

Thereafter, to wit: on the 3rd day of February, A. D. 1893, the court made and filed its findings of fact and conclusions of law in said cause in favor of plaintiff and against defendant.

Within the time allowed by law, said defendant served and filed its notice of intention to move for a new trial, as follows, to wit:

Notice of Intention to Move for New Trial.

(Title of Court and Cause.)

Please take notice that the defendant above named intends to move the court to grant a new trial in this case, upon the following grounds, viz:

1st. Insufficiency of the evidence to justify the decision of the court.

2d. That the decision of the court is against law.

3d. Error in law occurring at the trial and excepted to by the defendant.

443 The said motion will be made upon a statement of the case.

H. S. BROWN,
FOSHAY WALKER,
J. E. FOULDS,
Attorneys for Defendant.

To The People of the State of California, the said plaintiff, and Langhorne & Miller, attorneys for plaintiff.

Thereafter, by stipulation of counsel and order of court, the time within which defendant was entitled to prepare and serve its statement on motion for new trial herein was extended to and including the 27th day of March, A. D. 1893.

Defendant's Assignment and Specification of Errors.

I.

The evidence is insufficient to justify the decision of the court as to the first cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is nowhere

contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D. 1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being
444 within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the State tax amounting to one hundred and nine thousand four hundred and forty ($109,440.00) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at 6 o'clock, p. m., or at any other time, five per cent. of said State tax, to wit: the sum of five thousand four hundred and seventy-two ($5,472.00) dollars was by the comptroller of said State added to said State tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely
445 dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection and upon supposed services, which may hereafter be rendered by said counsel in connection with said cause of action in other courts and places and in other proceedings, which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages of this litigation after the commencement of this action, and is, therefore, entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of railways nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, within the State of California, for the year 1887, was made by the State board of equaliza-

tion as required by section 10 of article XIII of the constitu-
446 tion of this State, to any of the cities, towns, townships or districts in which said railroad is located; whereas, the evidence shows, and it is nowhere contradicted, that at the time of the levy of the rate of county taxes, by the supervisors of the counties of Alameda, Butte, San Joaquin, Santa Clara, Shasta, Siskiyou, Stanislaus and Yuba, for the year 1887, certain special school taxes were levied in various school districts of each of said counties, by the supervisors thereof, which were collectible in the same manner as other county taxes, and the rate of said special school taxes was included in and became part of said county rate of taxation in each of said counties, and is so blended therewith that it cannot be segregated therefrom.

II.

The evidence is insufficient to justify the decision of the court as to the second cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D. 1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section
3664 of the Political Code of said State, or in any verified
447 statement thereof furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the county tax, amounting to twelve thousand seven hundred and sixty-two and $\frac{7}{100}$ ($12,762.07) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at six o'clock p. m., or at any other time, five per cent. of said county tax, to wit: the sum of six hundred and thirty-eight and $\frac{10}{100}$ ($638.10) dollars, was by the comptroller of said State added to said county tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services, which may hereafter be rendered by said
counsel in connection with said cause of action in other courts
448 and places and in other proceedings, which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages of this litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of railways nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad within the State of California for the year 1887 was made by the State board of equalization as required by section 10 of article XIII of the constitution of this State to any of the cities, towns, townships or districts in which said railroad is located; whereas, the evidence shows, and it is nowhere contradicted, that at the time of the levy of the rate of county taxes by the supervisors of the county of Alameda for the year 1887 certain special school taxes were levied in various school
449 districts of said county by the supervisors thereof, which were collectible in the same manner as other county taxes, and the rate of said special school taxes was included in and became part of said county rate of taxation in said county, and is so blended therewith that it cannot be segregated therefrom.

III.

The evidence is insufficient to justify the decision of the court as to the third cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D. 1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the county tax amounting to eleven thousand one hundred and twenty-three and seventy-three
450 hundredths ($11,123.73) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at six o'clock, p. m., or at any other time, five per cent. of said county tax, to wit, the sum of five hundred and fifty-six and eighteen-hundredths ($556.18) dollars was, by the comp-

troller of said State, added to said county tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services which may hereafter be rendered by said counsel in connection with said cause of action in other courts and places, and in other proceedings, which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various
451 stages of this litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of railways nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad within the State of California for the year 1887 was made by the State board of equalization as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships or districts in which said railroad is located; whereas, the evidence shows, and it is nowhere contradicted, that at the time of the levy of the rate of county taxes by the supervisors of the county of Butte for the year 1887 certain special school taxes were levied in various school districts of said county by the supervisors thereof, which were collectible in the same manner as other county taxes, and the rate of said special school taxes was included in and became part of said county rate of taxation in said county, and is so blended therewith that it cannot be segregated therefrom.

452 IV.

The evidence is insufficient to justify the decision of the court as to the fourth cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D.

1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant had never at any time paid the county tax amounting to fifteen thousand, seven hundred and twenty-five and eleven-hundredths ($15,725.11) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at six o'clock, p. m., or at any other time, five per cent. of said county tax, to wit: the sum of seven hundred and eighty-six and twenty-five hundredths ($786.25) dollars was by the comptroller of State added
453 to said county tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services, which may hereafter be rendered by said counsel in connection with said cause of action in other courts and places and in other proceedings, which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages of this litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of
454 railways nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad within the State of California, for the year 1887 was made by the State board of equalization, as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships or districts in which said railroad is located.

V.

The evidence is insufficient to justify the decision of the court as to the fifth cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D. 1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof furnished said board by said defendant, and that
455 said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that defendant has never at any time paid the county the tax amounting to ten thousand nine hundred and fifty-nine and ten-hundredths ($10,959.10) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at six o'clock, p. m., or at any other time, five per cent. of said county tax, to wit, the sum of five hundred and forty-seven and ninety-five hundredths ($547.95) dollars, was by the comptroller of said State added to said county tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton, as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services, which may hereafter be rendered by said counsel in connection with said cause of action in other
456 courts and places and in other proceedings, which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages of this litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of railways nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad within the State of California for the year 1887 was made by the State board of equalization as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships or districts in which said railroad is located.

VI.

The evidence is insufficient to justify the decision of the court as to the sixth cause of action in the amended complaint:

457 *a.* Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D. 1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the county tax, amounting to twelve thousand and forty-seven and eighty-seven hundredths ($12,047.87) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at 6 o'clock p. m., or at any other time, five per cent. of said county tax, to wit: the sum of six hundred and seven and thirty-nine hundredths ($607.39) dollars, was by the comptroller of said State added to said county tax for delinquency, or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said

458 cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton, as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services, which may hereafter be rendered by said counsel in connection with said cause of action in other courts and places and in other proceedings, which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages of this litigation after the commencement of this action, and is therefore entitled to no fee as counsel herein; further, that there is no evi-

dence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of railwasy nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

459 *e.* Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, roadbed, rails and rolling stock of defendant's railroad within the State of California for the year 1887 was made by said State board of equalization as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships or districts in which said railroad is located.

VII.

The evidence is insufficient to justify the decision of the court as to the seventh cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D. 1887, did not describe the franchise, roadway, road*way*, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the county tax amounting to

460 thirty-five thousand and thirty-three and twenty-one hundredths ($35,033.21) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December 1887, at six o'clock, p. m., or at any other time, five per cent. of said county tax, to wit: the sum of seventeen hundred and fifty-one and sixty-six hundredths ($1,751.66) dollars, was by the comptroller of said State added to said county tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Laughorne & Miller and A. R. Cotton, as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection and upon supposed services which may hereafter be rendered by said

counsel in connection with said cause of action in other courts and places, and in other proceedings, which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller
461 of State, but only represented the attorney general at various stages of this litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of railways nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad within the State of California for the year 1887 was made by the State board of equalization as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships or districts in which said railroad is located.

VII[1].

The evidence is insufficient to justify the decision of the court as to the eighth cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August,
462 A. D. 1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the 7th day of April 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the county tax amounting to six thousand four hundred and twenty-eight and seventy-one hundredths ($6,428.71) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at six o'clock, p. m., or at any other time, five per cent. of said county tax, to wit: the sum of three hundred and twenty-one and forty-three hundredths ($321.43) dollars, was by the comptroller of said State added to said county tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton, as

counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of
463 said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services, which may hereafter be rendered by said counsel in connection with said cause of action in other courts and places and in other proceedings which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages of this litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of railways nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad within the State of
464 California for the year 1887 was made by the State board of equalization as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships or districts in which said railroad is located.

IX.

The evidence is insufficient to justify the decision of the court as to the ninth cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D. 1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the city and county tax amounting to seven hundred and six and thirty-nine hundredths ($706.39) dollars, set forth in said cause of action or any part thereof, or that on the last Monday in December, 1887, at six o'clock p. m., or at any

other time, five per cent of said city and county tax, to wit:
465 the sum of thirty-five and thirty-one hundredths ($35.31) dollars was by the comptroller of said State added to said city and county tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton, as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection and upon supposed services, which may hereafter be rendered by said counsel in connection with said cause of action in other courts and places and in other proceedings which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages of this litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

466 *d.* Because neither the duplicate record of assessments of railways nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad within the State of California for the year 1887 was made by the State board of equalization as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships or districts in which said railroad is located.

X.

The evidence is insufficient to justify the decision of the court as to the tenth cause of action in the amended complaint:

a. Because the evidence affimatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D. 1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified
467 statement thereof furnished said board by said defendant, and

that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the county tax amounting to eight thousand three hundred and six and seventy-eight hundredths ($8,306.78) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at 6 o'clock, p. m., or at any other time, five per cent. of said county tax, to wit: the sum of four hundred and fifteen and thirty-three hundredths ($415.33) dollars, was by the comptroller of said State added to said county tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Laughorne & Miller and A. R. Cotton, as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services, which may hereafter be rendered by said
468 counsel in connection with said cause of action in other courts and places, and in other proceedings which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages of this litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of railways, nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad within the State of California for the year 1887 was made by the State board of equalization as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships or districts in which said railroad is located; whereas, the evidence shows, and it is nowhere contradicted, that at the time of the levy of the rate of county taxes, by the supervisors of the county of San Joaquin for the year
469 1887, certain special school taxes were levied in various school districts of said county by the supervisors thereof, which were collectible in the same manner as other county taxes, and the rate of said special school taxes was included in and became

part of said county rate of taxation in said county, and is so blended therewith that it cannot be segregated therefrom.

XI.

The evidence is insufficient to justify the decision of the court as to the eleventh cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D. 1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the county tax, amounting to eleven hundred and sixty and fifty-six hundredths ($1,160.56) dol-
470 lars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at six o'clock p. m., or at any other time, five per cent. of said county tax, to wit: the sum of fifty-eight and two-hundredths ($58.02) dollars, was by the comptroller of said State added to said county tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton, as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services which may hereafter be rendered by said counsel in connection with said cause of action in other courts and places and in other proceedings which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages
471 of this litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of the assessment of railways nor the duplicate record of apportionment of railway assess-

ments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad within the State of California, for the year 1887, was made by the State board of equalization, as required by section 10 of article XIII of the constitution of this State to any of the cities, towns, townships or districts in which said railroad is located; whereas, the evidence shows, and it is nowhere contradicted, that at the time of the levy of the rate of county taxes by the supervisors of the county of Santa Clara, for the year 1887, certain special school taxes were levied in various school districts of said county, by the supervisors thereof, which were collectible in the same manner as other county taxes, and the rate of said special school taxes was included in and became part of said county rate of taxation in said county, and is so blended therewith that it cannot be segregated therefrom.

472 XII.

The evidence is insufficient to justify the decision of the court as to the twelfth cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D. 1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the county tax amounting to thirty-three thousand seven hundred and seventeen and twenty-five hundredths ($33,717.25) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at six o'clock, p. m., or at any other time, five per cent. of said county tax, to wit: the sum of one thousand six hundred and eighty-five and eighty-six hundredths ($1,685.86) dollars, was by the comp-
473 troller of said State added to said county tax for delinquency; or that no part of said five per cent. has ever been paid by said defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton, as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely specu-

lative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services, which may hereafter be rendered by said counsel in connection with said cause of action in other courts and places and in other proceedings, which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages of this litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of
474 railways nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, within the State of California, for the year 1887, was made by the State board of equalization as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships or districts in which said railroad is located; whereas, the evidence shows, and it is nowhere contradicted, that at the time of the levy of the rate of county taxes, by the supervisors of the county of Shasta, for the year 1887, certain special school taxes were levied in various school districts of said county, by the supervisors thereof, which were collectible in the same manner as other county taxes, and the rate of said special school taxes was included in and became part of said county rate of taxation in said county, and is so blended therewith that it cannot be segregated therefrom.

XIII.

The evidence is insufficient to justify the decision of the court as to the thirteenth cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is no-
475 where contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D. 1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the county tax amounting to eleven hundred and twenty-five and twenty-two hundredths ($1,125.22) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at six o'clock p. m., or at any other time, five per cent. of said county tax, to wit: the sum of fifty-six and twenty-six hundredths ($56.26) dollars, was by the comptroller of said State added to said county tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Langhorne & Miller and A. R.
476 Cotton, as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services, which may hereafter be rendered by said counsel in connection with said cause of action in other courts and places and in other proceedings which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages of this litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of railways nor the duplicate records of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any appor-
477 tionment of the assessment of the franchise, roadway, roadbed, rails and rolling stock of defendant's railroad within the State of California for the year 1887 was made by the State board of equalization, as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships or districts in which said railroad is located.

XIV.

The evidence is insufficient to justify the decision of the court as to the fourteenth cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D.

1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the county tax, amounting to thirteen thousand and eighty-eight and seventy-six hun-
478 dredths ($13,088.76) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at six o'clock, p. m., or at any other time, five per cent. of said county tax, to wit: the sum of six hundred and fifty-four and forty-three hundredths ($654.43) dollars, was by the comptroller of said State added to said county tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton, as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services, which may hereafter be rendered by said counsel in connection with said cause of action in other courts and places and in other proceedings, which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages of
479 this litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of railways nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad within the State of California for the year 1887 was made by the State board of equalization, as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships, or districts in which said railroad is located; whereas, the evidence shows, and it is no-

where contradicted, that at the time of the levy of the rate of county taxes by the supervisors of the county of Siskiyou, for the year 1887, certain special school taxes were levied in various school districts of said county by the supervisors thereof, which were collectible in the same manner as other county taxes, and the rate of said special school taxes was included in and became part of said county rate of taxation in said county, and is so blended therewith that it cannot be segregated therefrom.

480 XV.

The evidence is insufficient to justify the decision of the court as to the fifteenth cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D. 1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the 7th day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the county tax, amounting to three thousand three hundred and ten and twenty-four hundredths ($3,310.24) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at six o'clock p. m., or at any other time, five per cent. of said county tax, to wit: the sum of one hundred and sixty-five and fifty-one hundredths ($165.51) dollars was by the comptroller of said State added to said county tax for delinquency, or that no part of said five per cent. has ever been paid by defendant;

481 *c.* Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton, as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services, which may hereafter be rendered by said counsel in connection with said cause of action in other courts and places, and in other proceedings, which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages of this

litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of railways nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any un-
482 paid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad within the State of California, for the year 1887, was made by the State board of equalization, as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships or districts in which said railroad is located; whereas, the evidence shows, and it is nowhere contradicted, that at the time of the levy of the rate of county taxes by the supervisors of the county of Stanislaus for the year 1887, certain special school taxes were levied in various school districts of said county by the supervisors thereof, which were collectible in the same manner as other county taxes, and the rate of said special school taxes was included in and became part of said county rate of taxation in said county, and is so blended therewith that it cannot be segregated therefrom.

XVI.

The evidence is insufficient to justify the decision of the court as to the sixteenth cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August,
483 A. D. 1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof, furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the county tax, amounting to fourteen hundred and eighty-one and three-hundredths ($1,481.03) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at six o'clock p. m., or at any other time, five per cent. of said county tax, to wit: the sum of seventy-four and five-hundredths ($74.05) dollars, was, by the comptroller of said State, added to said county tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted,

that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution
484 of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services, which may hereafter be rendered by said counsel in connection with said cause of action in other courts and places, and in other proceedings, which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages of this litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of railways nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad within the State of
485 California for the year 1887 was made by the State board of equalization, as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships or districts in which said railroad is located; whereas, the evidence shows, and it is nowhere contradicted, that at the time of the levy of the rate of county taxes by the supervisors of the county of Sutter, for the year 1887, certain special school taxes were levied in various school districts of said county by the supervisors thereof, which were collectible in the same manner as other county taxes, and the rate of said special school taxes was included in and became part of said county rate of taxation in said county, and is so blended therewith that it cannot be segregated therefrom.

XVII.

The evidence is insufficient to justify the decision of the court as to the seventeenth cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August A. D. 1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified

statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of
486 section 3664 of the Political Code of said State, or in any verified statement thereof furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the county tax amounting to ten thousand five hundred and forty and forty-nine hundredths ($10,540.49) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at six o'clock, p. m., or at any other time, five per cent. of said county tax, to wit: the sum of five hundred and twenty-seven and two-hundredths ($527.02) dollars, was by the comptroller of said State added to said county tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in said cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton, as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services, which may hereafter be rendered by
487 said counsel in connection with said cause of action in other courts and places, and in other proceedings, which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages of this litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of railways nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad within the State of California for the year 1887 was made by the State board of equalization, as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships or districts in which said railroad is located.

XVIII.

The evidence is insufficient to justify the decision of the court as to the eighteenth cause of action in the amended complaint:

488 *a.* Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D. 1887, did not describe the franchise, roadway, roadbed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof, furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the county tax amounting to three thousand three hundred and seventy and eighteen-hundredths ($3,370.18) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at 6 o'clock, p. m., or at any other time, five per cent. of said county tax, to wit: the sum of one hundred and sixty-eight and fifty-six hundredths ($168.56) dollars, was by the comptroller of said State added to said county tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in

489 said cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton, as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent, and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services, which may hereafter be rendered by said counsel in connection with said cause of action in other courts and places, and in other proceedings, which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller of State, but only represented the attorney general at various stages of this litigation after the commencement of this action, and is therefore entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of railways nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

490 *e.* Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, within the State of California, for the year 1887, was made by the State board of equalization as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships or districts in which said railroad is located.

XIX.

The evidence is insufficient to justify the decision of the court as to the nineteenth cause of action in the amended complaint:

a. Because the evidence affirmatively shows, and it is nowhere contradicted, that the assessment of the State board of equalization of the State of California, made on the 13th day of August, A. D. 1887, did not describe the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad, then situated and being within said State, as the same was described by defendant in its verified statement thereof, furnished said board by defendant on or about the seventh day of April, 1887, pursuant to the provisions of section 3664 of the Political Code of said State, or in any verified statement thereof furnished said board by said defendant, and that said description was not as set forth in said first cause of action;

b. Because it does not appear from the evidence that the defendant has never at any time paid the county tax amounting to
491 five thousand four hundred and fourteen and one-hundredth ($5,414.01) dollars, set forth in said cause of action, or any part thereof, or that on the last Monday in December, 1887, at six o'clock p. m., or at any other time, five per cent. of said county tax, to wit: the sum of two hundred and seventy and seventy-hundredths ($270.70) dollars, was by the comptroller of said State added to said county tax for delinquency; or that no part of said five per cent. has ever been paid by defendant;

c. Because the evidence shows, and it is nowhere contradicted, that the percentage upon the principal sum sued for in the said cause of action, awarded to Messrs. Langhorne & Miller and A. R. Cotton, as counsel fees, is not a reasonable or just compensation for legal services rendered by them in the institution and prosecution of said cause of action for the plaintiff, but that the same is purely speculative and contingent and is at a much higher rate than and in excess of the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services, which may hereafter be rendered by said counsel in connection with said cause of action in other courts and places and in other proceedings, which may or may not be taken or rendered;

The evidence further shows, and it is nowhere contradicted, that A. R. Cotton was not retained as counsel by the comptroller
492 of State, but only represented the attorney general at various stages of this litigation after the commencement of this ac-

tion, and is therefore entitled to no fees as counsel herein; further, that there is no evidence that any counsel fees in said action have been incurred by the plaintiff or audited by the State board of examiners;

d. Because neither the duplicate record of assessments of railways nor the duplicate record of apportionment of railway assessments for the year 1887, in evidence in this action, show any unpaid taxes against this defendant for property assessed by the State board of equalization for that year;

e. Because it is not shown by the evidence that any apportionment of the assessment of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad within the State of California for the year 1887 was made by the State board of equalization, as required by section 10 of article XIII of the constitution of this State, to any of the cities, towns, townships or districts in which said railroad is located; whereas, the evidence shows, and it is nowhere contradicted, that at the time of the levy of the rate of county taxes by the supervisors of the county of Yuba for the year 1887, certain special school taxes were levied in various school districts of said county, by the supervisors thereof, which were collectible in the same manner as other county taxes, and the rate of said special school taxes was included in and became part of said county
493 rate of taxation in said county, and is so blended therewith that it cannot be segregated therefrom.

XX.

The evidence is insufficient to justify the decision of the court as to and sustaining each and all of the causes of action set forth in said amended complaint, for the reason that it nowhere appears by the evidence of plaintiff what franchise of the defendant was assessed by the State board of equalization; that the particular descriptions of the property assessed, as set forth in each of said causes of action, are descriptions of property included within the terms rolling stock, roadway, road-bed and rails, but do not describe or pretend to describe any franchise of the defendant; whereas, it affirmatively appears by the evidence of defendant, and is nowhere contradicted, that, in making said assessment, the State board of equalization included as an element of value therein the franchise of defendant derived from the Government of the United States, under the several acts of Congress set forth in the findings, that the value of said franchises is so blended with the values of the other property assessed as to be incapable of segregation therefrom, and therefore said assessment, and the whole thereof is void.

XXI.

The evidence is insufficient to justify the decision of the court as to the apportionment of the assessment and the transmission thereof, set forth in finding of fact XX, in this: that it
494 affirmatively appears from the evidence, and is nowhere contradicted, that the only apportionment made or attempted to

be made by said board was to the counties specified in the amended complaint and to the city and county of San Francisco, which was transmitted to the county auditors of said counties and the auditor of said city and county.

XXII.

The evidence is insufficient to justify the decision of the court contained in finding of fact XXXI, that "at the time said assessment and apportionment were made as aforesaid by said State board of equalization the assessment books or rolls for said fiscal year had been completed and were in existence, and the assessment and valuation of defendant's property for the purpose of taxation for said fiscal year had been ascertained and fixed as provided by law, and said board in making said valuation and apportionment did exercise all necessary powers relative to the equalization of values for the purpose of taxation," for the reason that there is no evidence that said books or rolls had been so completed or were in existence, nor could the same have been so completed or in existence under the law, nor is there any evidence that the assessment and valuation of defendant's property, for the purposes of taxation for said fiscal year, had been ascertained and fixed as provided by law, nor was there any provision of law by which the same could have
495 been ascertained and fixed as aforesaid, nor is there any evidence that said board in making said valuation and apportionment did exercise all necessary powers relative to the equalization of values for the purpose of taxation, nor was there, nor could there be, any power or authority vested by law in said board to equalize values in making the same.

XXIII.

The evidence is insufficient to justify the decision of the court contained in finding of fact No. XXXIII, that the State board of equalization, in making its said assessment and valuation, did not adopt a system of valuation which operated unequally, for the reason that the evidence shows that the rule of valuation adopted by said board was based upon the provisions of section 4 of article XIII of the constitution of this State, and only applied, and could only apply, to the property of railroad and other quasi-public corporations, and was therefore unequal in its operation and in conflict with the fourteenth amendment of the Constitution of the United States.

XXIV.

The evidence is insufficient to justify the decision of the court, contained in finding of fact XXXIII, that the State board of equalization did not value nor assess defendant's franchise in excess of its actual value; because it appears from the evidence, and is
496 nowhere contradicted, that, in estimating and assessing defendant's franchise, said board included and estimated the value of the franchises derived and held by defendant from and under the Government of the United States, and that such value

was blended with the assessment of the other franchises and property of defendant in such a manner that it cannot be segregated therefrom.

XXV.

The evidence is insufficient to justify the decision of the court, contained in finding of fact No. XXXV, for the reason that the evidence shows, and it is nowhere contradicted, that in making its assessment and valuation therefor of defendant's franchise said State board of equalization did include, assess and value all of the franchises and corporate powers held and exercised by defendant within the State of California under the acts of Congress mentioned in the prior findings of fact, and pleaded in the answer of defendant, and that said board, in making said assessment and valuation therefor upon defendant's franchise, road-bed, roadway, rails and rolling stock, for purposes of taxation for the fiscal year 1887, did include in its said assessment and valuation therefor all the franchises then possessed by defendant, derived from and held under and by virtue of the acts of Congress of the United States, and under the authority of the Government of the United States, and that by reason of the premises, the franchise, roadway, road-bed, rails and rolling
497 stock of defendant's railroad were not valued and assessed by said State board of equalization, for purposes of taxation for the fiscal year 1887, at their actual value, and in proportion to their value respectively, but largely in excess thereof, to wit: to the extent of the value of said Federal franchises.

XXVI.

The evidence is insufficient to justify the decision of the court, as set forth in finding of fact No. XXXV, for the reason that upon a comparison of said finding of fact with the opinion of the court upon which the same is based, as set forth in the statement on motion for new trial, it is manifestly impossible to determine therefrom whether said finding of fact is made upon a consideration of the evidence tending to establish that the Federal franchise of defendant was assessed or included in the assessment of the State board of equalization of the property of defendant for the year 1887, and upon the preponderance of evidence upon that point in favor of plaintiff; or whether said finding is made upon the presumption of fact of the regularity of the proceedings of the State board of equalization, and that the same is unassailed by reason of the incompetency of all evidence upon the part of defendant tending to rebut such presumption, and the consequent exclusion of such evidence from consideration by the court.

XXVII.

The evidence is insufficient to justify the decision of the
498 court contained in finding of fact No. XXXVI, that the boards of supervisors of the counties of Alameda, Butte, San Joaquin, Santa Clara, Shasta, Siskiyou, Stanislaus and Yuba made

and caused to be entered in the proper record book an order stating and declaring the number of miles of track, and the assessed value per mile of such railway, lying in each city, town, township, school and road district, or lesser taxing district, in the county respectively through which defendant's railway ran, as fixed by the State board of equalization; for the reason that the evidence shows, and it is nowhere contradicted, that said State board of equalization in no manner apportioned or fixed the number of miles of track, and the assessed value per mile of such railway, lying in any city, town, township, school or road district, or lesser taxing district of any county, or city and county, in the State of California, through which defendant's railway ran.

XXVIII.

The evidence is insufficient to justify the decision of the court, as set forth in finding of fact No. XXXVII, for the reason that each and all of the facts specially pleaded in the answer of defendant, among its affirmative defenses, and not found upon in any of the preceding findings of fact, were fully supported by the evidence, or were of the character of facts of which the court was bound to take judicial notice; and hence each and all of said facts should have been found as alleged in said answer.

499 XXIX.

The evidence is insufficient to justify the decision of the court as to the 2d, 3d, 4th, 8th, 10th, 11th, 15th, 17th and 19th causes of action in this, that from the duplicate record of apportionment of railroad assessments for 1887, introduced in evidence, it is impossible to determine what rate of county taxation was fixed by the boards of supervisors of the counties of Alameda, Butte, Fresno, Sacramento, San Joaquin, Santa Clara, Stanislaus, Tehama and Yuba, and transmitted to or obtained by the comptroller of State, upon which the amount of the county tax due to each of said counties, as set forth in the apportionment, is based; nor can it be ascertained from said apportionment how, or in what manner, the amount of taxes claimed to be due to each of either of said counties was arrived at or computed by said comptroller, or that any valid rate of taxation was ever fixed by the board of supervisors of either of said counties for the reason that in the said record of apportionment to each of said counties, it is shown that two several and distinct rates were fixed, and the amount of taxes extended into the column designated in said record as showing the amount of county taxes due to each of said counties does not correspond with a computation at either of said rates, or at the sum of said rates, at the assessed value of the property of defendant apportioned to each of said counties by said record.

500 XXX.

The decision of the court is against law, because it appears from the evidence and findings that all of the property of the defendant, upon which the taxes, which are the subject of this action, were as-

sessed by the State board of equalization, was at the time of said assessment subject to a lien of the United States to secure bonds issued to defendant and to a mortgage to secure bonds of defendant issued and held by individuals, some of whom were residents of the State of California, and that no deduction was made from the valuation of said property for or on account of said encumbrances, although the same were well known to said board of equalization, but said property was assessed at its full, actual cash value; whereas, all other property in the State of California, except that owned by railroads and other quasi-public corporations, was entitled to and received in its assessment for said fiscal year a deduction from its actual cash value of the amount of any mortgage, deed of trust, contract, or other obligation, by which a debt is secured, then subsisting upon it; that the said property of defendant was so assessed pursuant to the provisions of section 4 of article XIII of the constitution of the State of California, which is in conflict with the fourteenth amendment to the Constitution of the United States, and, by reason of the premises, said assessment, and the whole thereof, and all taxes levied thereunder, were and are null, void, and of
501 no effect, and no action can be maintained or judgment rendered therefor.

XXXI.

The decision of the court is against law, because it appears from the findings that the defendant was at the time of the making of said assessment the owner and holder of certain franchises of great value, derived from and held under and by virtue of certain acts of the Congress of the United States of America, and it appears from the evidence that in estimating the value of the franchise, roadway, road-bed, rails and rolling stock of defendant's railroad in the State of California, and in making the assessment thereof under which the taxes were levied for which this action is brought, the State board of equalization of the State of California included as an element of value, and assessed the value of the Federal franchises aforesaid, but, in making said assessment, blended the same with the other properties of defendant assessed by it in such a manner that it cannot be segregated therefrom, and therefore said assessment and the whole thereof, and all the taxes levied thereunder, and for which this action is brought, are null, void and of no effect, and no action can be maintained or judgment rendered therefor.

XXXII.

The decision of the court is against law because it appears from the findings and evidence that in the counties of Alameda,
502 Butte, San Joaquin, Santa Clara, Shasta, Siskiyou, Stanislaus and Yuba, certain special school taxes had been by the boards of supervisors of said several counties, duly levied in various school districts thereof, through which the railroad of defendant ran, for the year 1887, the rates whereof were included in and formed part of the county rates of levy for that year, and were levied upon the property of defendant, and constitute a portion of the levies of the

counties aforesaid upon which the said several county taxes sued for in this action are based; that the State board of equalization never, in any manner, apportioned the assessment made by it of the property of said defendant for said year to any of the school districts of either of said counties, as required by the provisions of section 10 of article XIII of the constitution of this State, but such apportionment was attempted to be made by the boards of supervisors of said several counties to their respective school districts, and was and is null and void; that, by reason of the premises, the rates of said county levies, furnished to the State comptroller, upon which the taxes for said counties sued for in this action are based, and said taxes were not fixed and levied as required by the constitution and laws of this State, but are null, void and of no effect, and no action or judgment can be maintained or rendered therefor.

XXXIII.

The decision of the court that plaintiff is entitled to recover
503 interest upon the principal sums of delinquent State and county taxes, found by the several findings of fact to be due from defendant to plaintiff, from the 27th day of December, 1887, at the rate of seven per cent. per annum, up to the date of the entry of judgment in this action, is against law, for the reason that there is no statute or law of the State of California which commands, allows or permits interest at any rate to be charged or collected after delinquency or otherwise, upon such taxes as are sued for in this action; and hence plaintiff is not entitled to recover any interest whatever herein.

XXXIV.

The decision of the court is against law, because counsel fees are allowed to plaintiff therein; whereas, the complaint contains no allegation, nor is there any evidence that any counsel fees have been incurred by plaintiff, or that any sum or amount therefor has been audited by the State board of examiners, as required by section 3668 of the Political Code of this State.

XXXV.

The decision of the court is against law, because the evidence shows that the counsel fees allowed therein are not a reasonable or just compensation for legal services rendered by counsel for plaintiffs in the institution and prosecution of this action, but that the same are purely speculative and contingent, and are fixed at
504 a much higher figure than the actual value of such services, because entirely dependent upon the contingency of the success of the plaintiff in this action, and upon the uncertainty and mere possibility of collection, and upon supposed services which may hereafter be rendered by said counsel in connection with this action in other courts and places and in other proceedings, which may or may not be taken or rendered; and further, that said A. R. Cotton was not retained as counsel by the comptroller of State, but

only represented the attorney general at various stages of this litigation after its commencement, and is therefore entitled to no fees as counsel herein.

XXXVI.

The decision of the court that plaintiff is entitled to a penalty of five per cent. upon the several principal sums found to be due by the findings of fact is against law, for the reason that there is no evidence that any such penalty was added thereto on the 27th day of December, 1887, or at any other time, by the comptroller of State, or any officer of the State of California, authorized to impose such or any penalty.

XXXVII.

The decision of the court is against law in this, that, whereas, by finding of fact No. XXXV, it is found that in making its assessment of defendant's property for the year 1887, the State board of equalization did not include, assess or value any franchise or corporate power held or exercised by defendant under any act or
505 acts of Congress, yet, upon a comparison of said finding of fact with the opinion of the court upon which the same is based, as set forth in the statement on motion for a new trial, it is manifestly impossible to determine therefrom whether said finding of fact is made upon a consideration of the evidence tending to establish that such Federal franchise of defendant was assessed or included in the assessment of the State board of equalization of the property of defendant for the year 1887, and upon the preponderance of evidence upon that point in favor of plaintiff, or whether said finding is made upon the presumption of fact of the regularity of the proceedings of the State board of equalization, and that the same is unassailed, by reason of the incompetency of all evidence upon the part of defendant tending to rebut such presumption, and the consequent exclusion of such evidence from consideration by the court.

XXXVIII.

The decision of the court is against law in this, that it appears by the findings of fact that the State board of equalization of the State of California did assess, for the year 1887, the franchise of defendant; whereas, it also appears from said findings that said franchise is in whole or in part held under and derived from the Government of the United States, and cannot, therefore, be the subject of taxation by any State, county or municipal government.

506 XXXIX.

The decision of the court is against law in this, that it appears from the findings of fact that the property of defendant, assessed by the State board of equalization, and upon which the taxes sought to be recovered in this action were imposed, was and is subject to a lien of the United States to secure the indebtedness of defendant to it, and that the Government of the United States has an interest and ownership therein to the extent of its said lien, and, by reason of

the premises, all of said property is exempt from taxation by any State, county or municipality.

XL.

The decision of the court is against law, because it appears that the property of defendants was assessed by the State board of equalization under the provisions of section 10, of article XIII, of the constitution of the State of California, and no provision is made by said constitution for the equalization of the assessed value thereof; whereas, all other property is entitled by said constitution to have its assessed value equalized by boards organized for the purpose of reviewing the action of assessors, and said provision of the constitution of the State of California is therefore unequal in its operation, denies to the defendant and other property-holders similarly situated the equal protection of the laws, and deprives the owners of their property without due process of law, and is repugnant
507 to the fourteenth amendment to the Constitution of the United States, and void.

XLI.

The court erred in admitting in evidence that portion of the duplicate record of assessments of railways by the State board of equalization, for the year of 1887, relating to the assessment of the property of defendant for said year.

XLII.

The court erred in admitting in evidence that portion of the duplicate record of apportionment of railway assessments for the year 1887, having reference to the apportionment of the assessment of the property of defendant for the year 1887.

XLIII.

The court erred in permitting the witness W. W. Douglas to testify as to the non-payment of taxes by defendant.

XLIV.

The court erred in permitting the witness W. W. Douglas to testify as to the non-payment of any portion of the taxes, or interest, or penalty.

XLV.

The court erred in permitting evidence as to the value of counsel fees to be introduced by plaintiff.

508 XLVI.

The court erred in denying defendant's motion for a nonsuit.

XLVII.

The court erred in admitting in evidence Plaintiff's Exhibit 4, for the purpose stated.

XLVIII.

The court erred in admitting in evidence Plaintiff's Exhibit 6 for the purpose stated.

XLIX.

The court erred in sustaining the objection of plaintiff to the following offer of evidence on the part of defendant, to be given by the witness L. C. Morehouse, viz: "We offer to prove by this witness, that at every session, during every year of the existence of the State board of equalization from the year 1883 and prior to the year 1888, the State board of equalization, in making its assessment of the valuation of the property of the Central Pacific Railroad Company, included in its total estimate of the value of the Federal franchise held by that company by virtue of the acts of Congress of the United States, which have been introduced in evidence, and that the valuation of the Federal franchise was blended with the general assessment of that company in such a manner as to be indistinguishable from it and not capable of separation."

509 L.

The court erred in permitting the following question to be put by counsel for plaintiff to the witness L. C. Morehouse, viz: "Then, as a matter of fact, if the assessment against the franchise, roadway, road-bed and rails of this company contained the Federal franchise, then the statement to you furnished by the railroad company, including the same words, also contained the Federal franchise?"

LI.

The court erred in permitting the following question to be put by counsel for plaintiff to the witness L. C. Morehouse, viz: "And that in fixing the value which you assigned to the property represented by those words, you only intended to include the property which was legally assessable under the State constitution?"

LII.

The court erred in sustaining plaintiff's objection to the following question to the witness E. W. Maslin, to wit: "From the various sources of knowledge which you have enumerated, please state to the court what elements were taken into consideration by the State board of equalization in making the assessment of those two companies for the year 1887?"

LIII.

510 The court erred in sustaining the objection to the following question to the witness E. W. Maslin, viz: "Did you hear any conversation between the members of the State board of equalization during the meeting when the assessment of this company was made for the year 1887, with reference to the elements that they proposed to and did include in the assessments?"

LIV.

The court erred in sustaining the objection to the following question to the witness E. W. Maslin, viz: "At the time that the assessment of 1887 was made by the State board of equalization upon the property of the Central Pacific Railroad Company, what was said and done at the meeting of the State board of equalization on that day in your presence?"

LV.

The court erred in disallowing defendant's offer of certain evidence by the witness E. W. Maslin, which offer was as follows, to wit: "We now offer to prove by this witness that from the time of the organization of the State board of equalization in 1880, down to and including the year 1887, that board had every year considered the value of the Federal franchise, that is, the franchise derived from the United States by the acts of Congress, the Government of the United States, belonging to and owned by the Central Pacific Railroad Company, as an element of value in assessing the total value of the property of that railroad company, and that in 1888
511 in consequence of the decision of the Supreme Court of the United States upon the subject, the State board of equalization for the first time ceased to consider this Federal franchise as an element of value, and hence reduced their valuation by the sum of three million dollars on the Central Pacific Railroad Company's property."

LVI.

The court erred in overruling defendant's objection to the following question put to the witness C. E. Wilcoxen, viz: "All action taken by the board with reference to the assessment of railroads, and especially with reference to the Central Pacific Railroad Company, were made matters of record either in the minutes of the board or in the assessment book of the board, were they not?"

LVII.

The court erred in overruling defendant's objection to the following question put to the witness C. E. Wilcoxen, viz: "But in regard to crossing bays or rivers, or anything of that sort, was that distance considered? Take for instance, the bay of San Francisco to Oakland mole, did you assess that part of the bay as a portion of their road-bed?"

LVIII.

The court erred in refusing to permit the witness C. E. Wilcoxen to be interrogated as to the evidence given by him before the
512 committee on judiciary of the assembly of the State of California on the 23d day of February, 1889, in answer to questions of Mr. Lezynsky and Mr. Dibble.

LIX.

The court erred in overruling defendant's objection to the following question put to the witness John P. Dunn, viz: "What was intended by the State board to be meant and included in the expression of 'franchise' in that statement against the railroad company?"

LX.

The court erred in overruling defendant's objection to the following question put to the witness John P. Dunn, viz: "Well, when this report was filed and returned as sworn to, as it appears to be, by the Central Pacific Railroad Company, returning a 'franchise' within the State of California, what did you understand or the board understand to be meant by that railroad company in using that term?"

LXI.

The court erred in overruling defendant's objection to the following question put to the witness John P. Dunn, viz: "Did he, or any other representative of that railroad company, claim before the board, at any meeting held in reference to the tax or assessment of 1887, that the word 'franchise' as used by it in its said state-
513 ment, which you hold, was ambiguous in any respect, and included anything more than the State franchise?"

LXII.

The court erred in overruling defendant's objection to the following question put to the witness John P. Dunn, viz: "Well, did he claim that the word franchise, as returned by them, describing their franchise, was ambiguous in any respect?"

LXIII.

The court erred in overruling defendant's objection to the following question put to the witness John P. Dunn, viz: "Did he claim that the words in that statement, 'franchise within the State,' included any Federal franchise which that road, the Central Pacific, claimed to have?"

Stipulation as to Correctness of Statement.

It is hereby stipulated and agreed, by and between the plaintiff and defendant, that the foregoing statement on motion for a new trial herein is correct, and that the same may be approved, allowed and settled by the court as now made, and may be used by the defendant as a statement herein timely made, served, approved,
514 allowed, settled and filed herein, upon its motion for a new trial herein, and upon appeal, if necessary.

Dated this 6th day of June, 1893.

LANGHORNE & MILLER,
Attorneys for Plaintiff.
H. S. BROWN,
FOSHAY WALKER,
J. E. FOULDS,
Attorneys for Defendant.

Order of Court Approving, Allowing, and Settling Statement.

The foregoing statement on motion for a new trial herein is correct, and is hereby approved, allowed and settled, and ordered filed as a part of the record herein, this 19th day of June, 1893.

J. C. B. HEBBARD, *Judge.*

Order Overruling Motion for New Trial.

On the 23d day of June, 1893, the court overruled the said motion for new trial by its order entered as follows:

(Title of Court and Cause.)

In this action the motion for a new trial coming on regu-
515 larly this day to be heard, and after argument by Messrs. Brown and Walker, counsel for defendant, and W. H. H. Hart, Esquire, counsel for plaintiff, and the court desiring to hear no further argument, said motion is ordered submitted. And now the court being fully advised herein, it is ordered that the motion for a new trial in this cause be and the same is hereby denied. It is further ordered that a stay of execution for thirty (30) days be and the same is hereby granted.

Notice of Appeal.

On the 11th day of July, 1893, the defendant duly served and filed its notice of appeal herein as follows:

(Title of Court and Cause.)

To the clerk of said court and to The People of the State of California, plaintiff, and Messrs. Langhorne & Miller, attorneys for plaintiff:

You will please take notice that the defendant in the above-entitled action hereby appeals to the supreme court of the State of California from the judgment therein made and entered in said superior court on the 3d day of February, 1893, in favor of the plaintiff in said action and against the defendant therein, and from the whole thereof.

You will also please take further notice, that the said de-
516 fendant hereby also further appeals from the order made and entered in said cause, in the said superior court, on the 23d day of June, 1893, refusing and denying the motion of the said defendant for a new trial in said action, and from the whole of said order.

H. S. BROWN,
FOSHAY WALKER,
J. E. FOULDS,
Attorneys for Defendant.

Dated this 11th day of July, 1893.

Stipulation as to Correctness of Transcript.

(Title of Court and Cause.)

It is hereby stipulated and agreed, by the parties herein, that the foregoing transcript contains full, true and correct copies of the pleadings, papers, documents, exhibits and proceedings, therein referred to, being a full, true and complete copy of the record herein, and, more particularly, of plaintiff's amended complaint, defendant's demurrer, order of court overruling defendant's demurrer, defendant's answer, first amendments to defendant's answer, second amendments to defendant's answer, findings of fact and conclusions of law, judgment, statement on motion for a new trial, order overruling motion for new trial and notice of appeal, and that all statements of fact in said transcript contained are true and correct as far as the same relates to dates of filing pleadings and papers and of making orders by the court.

517 It is further stipulated and agreed that the appeal in this case has been duly perfected, and that a good and sufficient undertaking on said appeal, in due form of law, has been properly executed and filed.

Dated this 28th day of Dec., 1893.

LANGHORNE & MILLER,
Attorneys for Respondent.

—— ——,
Attorneys for Appellant.

Certificate of Clerk as to Correctness of Transcript.

I, the undersigned, county clerk of the city and county of San Francisco, State of California, and *ex officio* clerk of the superior court in and for said city and county, do hereby certify that the foregoing transcript contains full, true and correct copies of the pleadings, papers, documents, exhibits and proceedings therein referred to, together with all endorsements thereon, being

518 a full, true and complete copy of the record herein, and more particularly, of plaintiff's amended complaint, defendant's demurrer, order of court overruling defendant's demurrer, defendant's answer, first amendments to defendant's answer, second amendment to defendant's answer, findings of fact and conclusions of law, judgment, statement on motion for new trial, order overruling motion for new trial and notice of appeal.

I hereby further certify that the said appeal in said cause has been duly perfected, and that a good and sufficient undertaking on said appeal, in due form of law, has been properly executed and filed.

Witness my hand and the seal of said court, this — day of ——, 1893.

—— ——, *Clerk*,
By —— ——, *Deputy Clerk.*

518½ Service and receipt of copy of within transcript admitted this 28th day of December, 1893.

LANGHORNE & MILLER,
Attorneys for Respondent.

519 *Recovery — Taxes Assessed Against a Railroad.*

Validity of section- 3668, 3669 and 3670, Pol. C., taking from the operation of the general law for the collection of taxes a certain class of railroads—General and special laws—Distinction and parallel between—Necessity for such laws—True practical limitation of the legislative power to classify—Why the railroads upon which the above-named sections operate constitute a class distinctive from all other railroads—Contention that the assessment is void because it includes the franchise received by the appellant from the United States—Error of the court in allowing interest on the amount of the delinquent taxes; also in allowing a counsel fee to an attorney who acted as assistant to the attorney general.

Filed Jan. 6, 1894.

Appeal from the superior court of San Francisco Co.—J. C. B. Hebbard, J.

For app't, H. S. Brown, J. E. Foulds, Foshay Walker; Wm. F. Herrin, of counsel.

For resp't, Att'y Gen'l Hart, A. R. Cotton, Langhorne & Miller.

In bank.

THE PEOPLE OF THE STATE OF CALIFORNIA, Respondent,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Appellant. } No. 15600.

Action to recover the amount of taxes assessed against the defendant by the State board of equalization for the fiscal year ending June 30, 1888.

1. The underlying question upon this appeal is the validity of sections 3668, 3669 and 3670 of the Political Code, the appellant contending that the provisions of these sections contravene the provisions of section 25, article IV of the constitution, and particularly of subdivision 10 thereof, by which the legislature is prohibited from passing a special law "for the assessment or collection of taxes;" that as these sections take from the operation of the general law for the collection of taxes a certain class of railroads, and are applicable to these railroads alone, they are a special law within this prohibition. The distinction between a special and a general law may not be capable of being formulated in a definition which will be exhaustive of the subject and applicable to every case; and the question may be better determined upon a consideration of each particular case presented for its application by taking into view the

purpose and character of the law, as well as the individuals upon which it is to operate. The legislature, in its function of providing for the public welfare and the benefit of the entire people of the State, must determine the character of the laws which it will enact, and, except in so far as it is prohibited by the constitution, should adapt these laws to the condition or necessities of different portions of the State or classes of its citizens. The constitution does not require that all the laws which the legislature shall pass shall have a uniform operation in every part of the State, nor does it prohibit legis-tion for different classes of citizens. The requirement that all laws of a general nature shall have a uniform operation, and that the legislature shall not pass special laws upon certain subjects, still leaves open for determination whether any particular statute is a general or a special law. A law which operates only upon a class of individuals is none the less a general law, if the individuals to whom it is applicable constitute a class which requires legislation peculiar to itself in the matter covered by the law. The class, however, must not only be germane to the purpose of the law, but must also be characterized by some substantial qualities or attributes which render such legislation necessary or appropriate for the individual members of the class. It may be "founded upon some natural or intrinsic or constitutional distinction" (Pasadena *vs.* Stimson, 91 Cal., 251), but the distinction must be of such a nature as to reasonably indicate the necessity or propriety of legislation restricted to that class. If the conditions of such a class are such as to require legislation which would be inappropriate or injurious to others, or such as to require the enactment of laws which, either in their mode of enforcement or the remedy they provide, are inapplicable to others than the designated class, laws enacted for that class are not special for the reason that they apply to all of the individuals within the conditions. "A law is regarded as general when the provisions apply to all objects of legislation distinguished alike by qualities and attributes which necessitate the legislation to which the enactment has manifest relation." Randolph *vs.* Wood, 49 N. J. L., 85. The rule has been formulated by the supreme court of Minnesota in the following terms: "The true practical limitation of the legislative power to classify is that the classification shall be based upon some apparent natural reason, some reason suggested by necessity, by such a difference in the situation and circumstances of the subjects placed in different classes as suggests the necessity or propriety of different legislation with respect to them." Nichols *vs.* Walter, 37 Minn., 272. It is very clearly expressed by Mr. Commissioner Temple in Darcy *vs.* The Mayor, etc., 8 Cal. Dec., p. 192: "The classification must be founded upon differences which are either defined by the constitution or natural, and which will suggest a reason which might rationally be held to justify the diversity in the legislation, and must be made for the purpose of meeting different conditions naturally requiring different legislation."

For the purpose of collecting delinquent taxes the railroads upon which the foregoing sections of the Political Code are intended to

operate constitute a class distinct from all other railroads, as well as from all other tax-payers. Not only are the sections inapplicable to other delinquent tax-payers, but the mode provided by statute for collecting delinquent taxes from other tax-payers is inapplicable to this class. The constitution has itself established these railroads into a distinct class in providing a special mode of assessment for a portion of their property as the basis upon which their taxes are to be levied, and the form and nature of this assessment renders it eminently appropriate, if not necessary, that the taxes levied against them should be collected in a different mode from that provided for the collection of other taxes. A mere examination of the statutes for the collection of delinquent taxes generally, discloses the unsuitableness of those statutes for the collection of delinquent taxes from railroads operated in more than one county. Under those statutes the tax-collector is required to pursue a course which would be entirely inapplicable to these railroads. By section 3764 of the Political Code he is required to publish a delinquent list which must contain a description of the property on which the taxes are delinquent, and, for the purpose of collecting the delinquent taxes by sale of the property, he is required by section 3773 to sell the least quantity of the property assessed for which a purchaser will pay the taxes and costs. Upon such sale he is to make out and deliver to the purchaser a certificate of sale which must contain "a description of the land sold," and enter the same description in a book kept by him for that purpose. If there is no redemption from the sale he must execute to the purchaser a deed containing the same description. The whole proceedings, commencing with the assessment and culminating in the deed, harmonize with each other, and deal with the property as a unit which can be described, levied upon, sold and taken into possession by the purchaser. Each item of property assessed is treated as an independent item disconnected with any other, so that upon the sale of one item it can be enjoyed by the purchaser irrespective of the sale of any other item. Such provisions are inapplicable to the railroads under consideration, so far as concerns that portion of their property which is assessed by the State board of equalization. It must be borne in mind that only a portion of their property, viz., the "franchise, roadway, road-bed, rails and rolling stock" of railroads operated in more than one county is thus assessed. The depots, stations, shops and buildings erected upon the space covered by the right of way are assessed by the assessor of the county in which they are situated, and the taxes upon this property are collected in the same mode as are taxes from other individuals. The constitution provides that after the State board of equalization has made the assessment of the franchise, roadway, road-bed, rails and rolling stock at their actual value, the same shall be apportioned to the counties in proportion to the mileage in the different counties. It is the "value" of the property after it has been assessed that is to be apportioned to the several counties. There is no apportionment to the counties of the property itself or of any particular part of that property. Upon the assessment book of the several counties the assessment that is ap-

portioned by the State board of equalization does not contain a description of the property within that county, or any designation of property upon which the taxes that may be levied could constitute a lien. Only the apportioned part of the assessed value is entered on the books of the county auditor as the basis of the taxes to be levied within the county—the amount upon which the percentage of tax is to be computed, and from which is derived the amount of taxes to be paid by the railroad. The nature of the property required to be assessed by the State board of equalization shows that the property itself is incapable of being apportioned, and that there could be no description entered upon the books which could serve as a basis of a sale or conveyance. Even if the roadway within the county could be described, there could be no apportionment to the several counties of the franchise or of the rolling stock which could serve as a description or be capable of transfer. The franchise is a unit and can be transferred only as a unit, and the rolling stock has no particular situs in any county, but in connection with the roadway and road-bed are essential for the enjoyment of the franchise, while the whole—the franchise, roadway, road-bed, rails and rolling stock—constitute an entirety incapable of division. If the taxes for any county that are levied against the railroad upon this apportionment by the State board of equalization are delinquent, there is no description of property within that county which can be advertised or incorporated into a certificate of sale and deed. Even if the roadway and road-bed within the several counties could be made the subject of sale for delinquent taxes, the functions of each tax-collector would be limited to his own county, and the purchasers in the different counties might not be the same. If they should be offered for sale and the tax-collector of each county should offer to sell to the one who would take the least portion thereof within his county, and only an undivided portion thereof should be sold in either county, the difficulties and complications that would arise between the several purchasers and the railroad of themselves indicate the necessity of devising some other mode of collecting the taxes. These and many other considerations that might be presented make it manifest that the constitution itself, by reason of the manner in which it has provided for the assessment of the property of railroads operated in more than one county, has made the laws which are appropriate for the collection of delinquent taxes upon property generally, inapplicable to these railroads, and that, inasmuch as they require legislation upon that subject peculiar to themselves, the law enacted for them is a general and not a special law.

The appellant has cited in support of the appeal People *vs.* C. P. R. R. Co., 83 Cal., 393. In that case the court held that, whether the complaint was to be regarded as an ordinary complaint in a civil action to recover money upon a statutory obligation, or as a complaint under section 3670 of the Political Code, it was insufficient, and that the demurrer to the complaint upon the ground that it did not state facts sufficient to constitute a cause of action was properly sustained. The court also held that a statutory provision for

a special form of complaint in an action to recover delinquent taxes contravenes the constitutional prohibition against passing special laws regulating practice in courts of justice; but, as the complaint in the present case is not prepared in that form, that question is not presented. The collection of taxes is not however the mere collection of a debt, but is a sovereign act of the State to be exercised as may be prescribed by the legislature. Whether the tax is collected by an action in court, or by summary sale by the tax-collector is immaterial. The State through its legislature can avail itself of the judicial power as the means by which it will collect the tax, and in such proceedings it may prescribe such precedure as may best avail for that purpose, irrespective of the mode of procedure provided for the determination of controversies between individuals, just as it may avail itself of the executive branch of the government by authorizing the sheriff to sell the property upon which the taxes are delinquent, without requiring him to pursue the same course as is required in sales upon judgments between individuals.

Although the tax is an obligation from the citizen to the
520 State, it is not of the same character of obligations as exists between citizens, and for the purposes of its collection the State is not limited to the same mode or to the same procedure which it prescribes for individuals in the collection of obligations between themselves. There are matters in the opinion of Mr. Justice Fox, in People *vs.* C. P. R. R. Co., in support of the contention of the appellant, but after the court had decided that the complaint was insufficient in any aspect in which it might be viewed, its further opinion of the effect of a complaint that would have sufficiently presented a cause of action must be regarded as *obiter dicta.*

2. It is further urged in support of the appeal that the assessment in question is void for the reason that it includes the franchise received by the appellant from the United States, and in support of this contention California *vs.* C. P. R. R. Co., 127 U. S., 1, is cited. The appellant originally received from the State of California a franchise to construct and operate its railroad within this State, and subsequently it received from the United States a franchise to construct and operate a railroad from the Pacific ocean eastward, and it is contended that the franchise from the State has been "merged" into that received from the United States. Appellant has not, however, referred us to any authority which holds that the union of the two franchises in the same corporation will operate as a merger of the State franchise, nor has it invoked any principle of law which would authorize us to hold that such merger took place. A license, or the right to exercise a privilege which is derived from one authority, is not necessarily destroyed or merged by procuring a similar license or right from another authority, any more than is a title to real estate merged by buying in a conflicting title, or taking a conveyance for further assurance from the grantor. The Supreme Court of the United States, in discussing the right to assess the Federal franchise, said in the foregoing action between these parties, 127 U. S., p. 38: "This important grant, though in part collateral to, was independent of that made to the company by the State of

California." It must be conceded that the State franchise is independent of the Federal franchise to the extent that it is capable of being revoked by the State. What the effect of such revocation would be, or whether it would in any respect impair the appellant's right to operate its road under the Federal franchise, need not be considered. So, too, if the United States in its visitatorial power should for any reason recall the franchise which it has conferred upon the appellant, the franchise received by it from the State of California would still remain, and enable it to operate its road. Whether the appellant is operating its road under the franchise derived from the United States or from the State, is immaterial. The right to operate the road is valuable, whether the road is at present operated under the exercise of this right or not. The franchise from the State is still a valid, existing right, and is property which is susceptible of valuation, although its value will depend upon a variety of circumstances. If its exercise is in abeyance while the road is being operated under the Federal franchise, it is none the less property, although that circumstance may diminish its taxable value.

The assessment in the present case is upon the "franchise, roadway, road-bed, rails and rolling stock," and the court finds "that in making its assessment and valuation therefor of defendant's franchise, said State board of equalization did not include, assess or value any franchise or corporate power held or exercised by defendant under any act of Congress." This finding is fully supported by the evidence. The Constitution (article XIII, § 10), as well as the statute (Pol. C., § 3665), requires the State board of equalization to include in its assessment the franchise of the railroad, and in the present case the property of the appellant which was assessed by the State board of equalization is described as "the franchise, roadway, road-bed, rails and rolling stock of said company within this State." We have seen that the State franchise is property susceptible of valuation, and, as the State board of equalization is directed to assess the franchise of the appellant, it must be assumed, in the absence of any other evidence than the assessment itself, that the board has acted upon property within its jurisdiction, rather than upon property which it has no power to include in the assessment. Section 3670 makes the duplicate record of assessments of railways and the duplicate record of apportionment of railway assessments, or a copy thereof, *prima facie* evidence of the assessment, and that the forms of law in relation to the assessment and levy of such taxes have been complied with; and, if there were no other evidence than this, the finding of the court would be sustained.

The appellant, however, under the provisions of section 3664 had furnished to the State board of equalization a statement signed by its secretary, as required by that section, in which it had given as property for which it was to be assessed a description of its roadway, and had stated in addition "the value of the franchise and entire roadway, road-bed and rails within this State is $12,273,785." While the mention by the appellant in the statement furnished by it of property which the State board of equalization had no authority to

assess would not prevent it from resisting an attempt to enforce an assessment upon such property, yet, if the property so mentioned in the statement could be assessed, or if, as in the present case, the appellant held two franchises, one of which could be assessed and the other could not, it must be held that the franchise which it included in its statement was the one capable of assessment, and that the appellant ought not to be permitted to say that the other was intended by it, or was included in the assessment. San Francisco *vs.* Flood, 64 Cal., 504; Lake County *vs.* Mining Co., 68 Cal., 14; Dear *vs.* Varnum, 80 Cal., 86. The value given by the appellant in its statement was not conclusive upon the State board. It was only a portion of the information which the board was to obtain in order to exercise its judgment in fixing the amount at which the assessment should be made. If the appellant felt aggrieved by the value placed upon the property as a unit, or as an aggregate of the several items included in its statement, the statute itself afforded the means by which it could obtain relief. There was no error in admitting these statements in evidence. Upon the contention by the appellant that the assessment included the Federal franchise, it was competent to show that it had been made in accordance with the statement furnished by it at the request of the State board.

Other testimony was introduced upon the issue presented by the answer that the assessment included the Federal franchise, but at the conclusion of the trial the court made the above finding that no Federal franchise had been assessed. As there was evidence before it in support of this finding, it must be treated here as conclusive, notwithstanding there was other evidence that might be regarded as raising a conflict therewith. It is recited in the statement on motion for a new trial that after the court had determined as a fact from a preponderance of the evidence before it that the Federal franchise was not assessed, it used the following language in a written opinion upon which the findings were based: "But, if the parol evidence offered did not weigh in plaintiff's favor, and if by a preponderance of such evidence defendants could have shown that the State intended to and did include a Federal franchise in the assessment, I think the court would have to disregard it as incompetent. The effect of such parol evidence would be to contradict the record, which cannot be done. From both the standpoints of fact and of law the findings must be that a Federal franchise was not included in these assessments." From this statement the appellant urges that the evidence offered by it in support of its averment that the assessment includes the Federal franchise was disregarded by the court in making its decision, and, as a consequence, that the rule regarding the conclusiveness of a decision upon a conflict of evidence has no application. It clearly appears, however, that the court did not disregard the evidence, but that, after determining as a fact from the preponderance of evidence before it that the Federal franchise had not been assessed, it stated that, if the preponderance of evidence had been otherwise, it would have held as a matter of law that the assessment must be tested by its own language. The fact that a court, after giving its decision upon an issue, gives its

opinion upon the manner in which it would have decided the issue under other circumstances, does not constitute an error to be reviewed in this court.

While Mr. Wilcoxen was being examined as a witness on behalf of the plaintiff, the defendant in its cross-examination asked him some questions referring to testimony given by him before the judiciary committee of the assembly in February, 1889, and the witness having admitted the correctness of the testimony counsel for defendant then stated to the court that he would read for the court's information the question and answer "upon which" he proposed to interrogate the witness, and after reading the same the court stated in substance that the evidence must be confined to the year 1887, to which counsel reserved an exception, and now urges that the court erred in not allowing an examination of the witness as to his previous statement. The court did not, however, refuse to allow the witness to be examined with reference to any previous statement, for the questions and answers were read to the court after the witness had stated that "the testimony is correct all through, the questions and the answers:" nor did the counsel for the defendant present any question "upon" these questions and answers for the ruling of the court, as he had stated was his purpose. If he had desired to question the witness upon any matters relating to other assessments than the one for the year 1887, he should have made a specific offer, or presented a question for the ruling of the court, but, in the absence of such offer or question, there was no error in the court confining the examination to that year.

The court properly excluded the testimony of Maslin concerning the conversations between the members of the State board of equalization during the session at which the assessment was made. The intention of the board or of any of its members, or the signification to be given to the term "franchise," as used in the assessment, could not be shown in this manner, and the evidence could not be used for impeaching purposes unless the members of the board had been previously questioned thereon.

3. The court erred in allowing plaintiff interest on the amount of the taxes. Section 3668 of the Political Code provides that, if the taxes are not paid on the last Monday in December in each year, five per cent. shall be added to the principal sum and paid by the delinquent. This is the only penalty given by the statute, but the court has included in its judgment not only this penalty but also interest upon the principal sum from the date of the delinquency at seven per cent. per annum. Taxes do not bear interest unless it is expressly given by statute (Cooley on Taxation, 2nd ed., p. 17); and the provision in section 3803 for interest upon a certain class of taxes is indicative of an intention upon the part of the legislature to exclude all other classes. A similar question was presented in People *vs.* N. P. C. R. R. Co., 68 Cal., 551, and decided adversely to the claim of the respondent herein, the court saying: "If it had been intended that interest should be collected on all taxes which the controller might sue for and recover, the complaint formulated by the legislature for their collection would, in our opinion, have

demanded judgment for that interest, as well as for the five per cent. for non-payment." The respondent seeks to uphold the judgment by virtue of the provision of section 3716 which declares that "every tax has the effect of a judgment against the person," etc.; and argues therefrom that as a judgment bears interest the tax will also bear interest. By the same reasoning the plaintiff would be entitled to an execution against the defendant under which the sheriff could satisfy the judgment. The "effect" of a judgment is not to bear interest, although that is one of its incidents. As a judgment, the tax is a "final determination" of the amount of public burden which is to be borne by the property on which it is charged; and the further declaration in the same section that the tax, as well as the judgment, is not removed until the taxes are paid or the property sold, indicates the character of the "effect of a judgment" which is given to the tax. It was proper to provide in the judgment that it should bear interest from its date of entry like any other judgment. Himmelman *vs.* Oliver, 34 Cal., 246.

4. The court also held that the plaintiff was entitled to recover for counsel fees for legal services rendered it by Langhorne & Miller a sum equal to seven and a half per cent. upon the principal sum of delinquent taxes, and for legal services rendered it by A. R. Cotton a sum equal to two and a half per cent. upon said principal sum; and rendered judgment accordingly. Langhorne & Miller
521 were the attorneys employed by the State controller to collect these taxes, and commenced this action in January, 1890, and have since that time had charge of the litigation and acted as the attorneys for the plaintiff. In the early part of 1891 the attorney general requested Mr. Cotton "to take a hand generally" in the suit, and after that time he wrote certain briefs which were filed in the case by the attorney general, and assisted the attorney general upon the argument on the demurrer and at the trial of the cause as special counsel. Section 3670 of the Political Code authorizes the controller to institute an action for the collection of these taxes after they have become delinquent, and authorizes the court to include in the judgment in such action such sum for counsel fees as it may determine to be reasonable and just. The power of the controller to employ special counsel in the action has not been questioned by the appellant, and it is, perhaps, deducible from the provision for counsel fees above cited. Section 3670 is in accord with the provisions of section 433 (16) of the Political Code, which make it the duty of the controller "to direct and superintend the collection of all moneys due the State," although the latter section without the direct provisions of section 3670 might not be authority for the institution of the present suit. The appellant, however, insists that the court could not award counsel fees to any other counsel than those employed by the controller, and that the allowance to Mr. Cotton was without authority of law. Section 470 of the Political Code makes it the duty of the attorney general "to attend the supreme court and prosecute or defend all causes to which the State or any officer thereof in his official capacity is a party. Whether this limits his duty to the prosecution of such causes in the supreme

court or whether it extends to all the courts of the State, need not be considered. If the controller has the right under section 3670 to entrust the management of the action to other attorneys than the attorney general, it would seem that the attorney general would be absolved from the duty imposed upon him by section 470, and that any part that he might take in such action would be voluntary and subordinate to the authority of the attorneys selected by the controller. If, however, he has the right as the law officer of the State to appear in the action, it is only by virtue of his official duty, and for that he would not be entitled to any compensation other than his official salary. This is the view taken by that officer himself, as he stated at the trial in the present action that in his opinion he was not entitled to any compensation. The same reason which would prevent him from being entitled to compensation for the services he might personally render in the action would also prevent him from receiving compensation for any person whom he might employ to assist him, and the court would be no more authorized to award judgment against the defendant for compensation to such assistant than it would be for compensation to the attorney general himself. We have been referred to no provision of law giving to the attorney general authority to employ special counsel to aid him in the discharge of his duties, or authorizing a court to award compensation to such special counsel; and in matters of taxation only such burdens can be imposed upon the tax-payer as have been expressly authorized by law, whether the taxes are collected by a sale of his property or by means of an action for their recovery. We hold, therefore, that the court was not authorized to include in the judgment against the defendant the sum for counsel fees awarded to Mr. Cotton.

The court below is directed to modify the judgment by striking therefrom the amount allowed for interest prior to the entry of the judgment, and also the amount allowed for counsel fees to A. R. Cotton; and, as so modified, the judgment and order denying a new trial will stand affirmed.

HARRISON, *J.*

We concur.

DE HAVEN, *J.*
GAROUTTE, *J.*
BEATTY, *C. J.*

Justices Van Fleet and Fitzgerald being disqualified did not participate in the foregoing decision.

Dissenting Opinion.

I dissent. Passing other questions, it is sufficient to say that, in my opinion, the assessment in question is void under the decisions of the Supreme Court of the United States in the cases of California *vs.* Central Pacific Railroad Co., and State of California *vs.* Southern Pacific R. R. Co., 127 U. S., 1, because it includes a Federal franchise, and thus attempts to tax "one of the means or instrumentali-

ties employed by the United States Government for carrying into effect its sovereign powers." That this cannot be done by a State has been the established law ever since the decision of the U. S. Supreme Court in McCulloch *vs.* Maryland, which was rendered in 1819. The principle was fully recognized and declared by this court in San Benito Co. *vs.* S. P. R. R. Co., 77 Cal., 518, and San Francisco *vs.* Western Union Tel. Co., 96 Cal., 140.

The only difference between the above-mentioned cases in 127 U. S. and the case at bar is that in the former the trial court found that the State board of equalization included in the assessment the value of "all franchises and corporate powers held and exercised by the defendant;" while in the case at bar the court below found that said board in making the assessment for the year 1887 "did not include in its said assessment any Federal franchise." But the assessment in both instances was exactly the same, namely: "the franchise" of the railroad. In the former cases it does not appear that the trial court received any evidence on the question as to what "the franchise" included; and it is probable that the finding was based upon the language of the assessment alone. In the case at bar the court did receive evidence as to what the members of the board intended by the words "the franchise;" and it appears in the record that the court, after having concluded that "from a preponderance of evidence before it the Federal franchise of defendant was not assessed or included in the assessment," proceeded to say that "if by a preponderance of such evidence defendants could have shown that the State intended to and did include the Federal franchise in the assessment, I think the court would have to disregard it as incompetent. The effect of such parol evidence would be to contradict the record, which cannot be done." Now, if it was competent to introduce testimony to show the intent of the members of the board when they made the assessment, then the court clearly erred in ruling out certain evidence offered on that point by appellant. Upon that theory the offered evidence of Maslin, secretary of the board for many years, was clearly admissible and material, and so were the questions asked by appellant in cross-examination of the witness Wilcoxen. On the other hand, if the record of the board should alone be considered, then it simply appears that "the franchise" was assessed; and I cannot possibly see how that phrase can be construed to mean anything else than the whole franchise of the railroad—all the franchise belonging to it. It means just what the lower court has found it to mean, as above quoted, in — cases in 127 U. S. The words "the franchise" clearly, in my judgment, include the right of appellant to do business—and the whole of that right. That right is a unit and inseparable. The court below found that the board "did assess as a unit, and not separately, the franchise, roadway," etc. And I cannot conceive how a court can, first, separate it, or second, if it could, how it could determine which part to throw away. Moreover, the main foundation of the doctrine of McCulloch *vs.* Maryland is that the power to tax includes the power to destroy; and thus a State might, under the guise of taxation, destroy or materially cripple an instrumentality of the

Federal Government. And is it not manifest that in the case at bar that principle protects the instrumentality here involved from injury or destruction under the pretense that only that part of the unity which comes from the State is taxed? Are not the effects and consequences the same?

In my opinion, therefore, without discussing the other questions involved, the judgment should be reversed.

McFARLAND, *J.*

522 In the Supreme Court of the State of California.

PEOPLE
vs.
CENTRAL PACIFIC R. R. Co. } Cause No. 15600.

The court below is directed to modify the judgment by striking therefrom the amount allowed for interest prior to the entry of the judgment, and also the amount allowed for counsel fees to A. R. Cotton, and, as so modified, the judgment and order denying a new trial will stand affirmed.

HARRISON, *J.*

We concur.
DE HAVEN, *J.*
GAROUTTE, *J.*
BEATTY, *C. J.*

Justices Van Fleet and Fitzgerald, being disqualified, did not participate in the foregoing decision.

Dissenting opinion—McFarland, J.

[Endorsed:] No. 15600. In the supreme court, State of California. The People, etc., *vs.* Central Pacific R. R. Co.

523 In the Supreme Court of the State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Defendant in Error,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Plaintiff in Error.

Petition for Allowance of Writ of Error.

To the honorable the justices of the supreme court of the State of California:

The Central Pacific Railroad Company, a corporation, plaintiff in error herein, most respectfully represents to your honors that it is the defendant and plaintiff in error in the proceedings and action hereinafter mentioned, and that The People of the State of California is the plaintiff, defendant in error in said proceedings; that said action was originally brought in the superior court of the State of California in and for the city and county of San Francisco on the 2nd day of January, 1891. On the 16th day of February, 1891, the

defendant filed its demurrer therein. On the 12th day of September, 1892, the court, after full argument, overruled the said demurrer.

On the 12th day of October, 1892, by leave of the court,
524 the said defendant filed its answer therein, and thereafter, to wit, on the 19th day of November, 1892, and the 11th day of January, 1893, by leave of the court, said defendant filed certain amendments to said answer. On the 9th day of January, 1893, said cause came on regularly for trial on the issues raised by said complaint and answer as amended before the court without a jury, a jury having been waived by the parties, and was tried and submitted to the court for decision, and thereafter, to wit, on the 3rd day of February, 1893, the court made, signed, and filed its written findings of fact and conclusions of law therein in favor of said plaintiff and against said defendant. On the 3rd day of February, 1893, judgment was entered, pursuant to said findings, in favor of said plaintiff and against said defendant for the sum of $295,740.71, with interest thereon from the 27th day of December, 1887, at the rate of 7 per cent. per annum, to date, amounting to $105,579.42, together with 5 per cent. upon said principal sum, amounting to $14,786.95; also for the sum of $22,180.56 as and for the counsel fee earned by Langhorne & Miller, as attorneys for plaintiff therein, and also the further sum of $7,393.51 as and for the counsel fee earned by A. R. Cotton, attorney for plaintiff therein, and for said plaintiff's costs and disbursements, amounting to the sum of $42.16.

Within the time allowed by law the said defendant served and filed its notice of intention to move for a new trial, and its statement on motion for a new trial was duly settled by the court and filed in said cause, and said motion for a new trial was thereafter
525 made and submitted to the court for decision. On the 23rd day of June, 1893, the court, by an order duly made and entered, overruled and denied said motion for a new trial. On the 11th day of July, 1893, said defendant duly appealed from said judgment and from said order denying said motion for a new trial to this honorable court, which, on the 6th day of January, 1895, modified said judgment by striking out therefrom the said sum of $105,579.42, allowed therein for interest, and the sum of $7,393.51, allowed therein for counsel fees earned by A. R. Cotton, and then and there affirmed said judgment as so modified and said order denying a new trial.

That in said action and proceeding there was drawn in question the validity of a statute of or an authority exercised under said State on the ground of its being repugnant to the Constitution or laws of the United States and the decision was in favor of such its validity, and that in said action and proceeding there was also drawn in question the construction of a clause of the Constitution or of a statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, statute, or commission.

And the defendant and appellant in said action, plaintiff in error herein, being dissatisfied with the judgment made and entered in

said action and the judgment of this honorable court in affirmance thereof, and feeling itself aggrieved thereby and by said action of said court in awarding a judgment in favor of The People of the State of California, plaintiff as aforesaid, defendant in error herein,
526 and that under the evidence the judgment should have been in favor of the plaintiff in error, and that such judgment is contrary both to the law and the evidence, and that evidence material to the defense of the defendant therein, plaintiff in error herein, was erroneously excluded by said superior court upon the trial of said action, now comes, by its attorneys, H. S. Brown, Foshay Walker, and J. E. Foulds, and petitions this honorable court for an order allowing said defendant, plaintiff in error herein, to prosecute a writ of error to the honorable Supreme Court of the United States under and in accordance with the laws of the United States in that behalf made and provided.

And also that an order be made fixing the amount of security which the defendant, plaintiff in error herein, shall give and furnish upon said writ, to operate as a supersedeas in said action, and that upon the giving of such security all further proceedings in the supreme court of the State of California and said superior court of the State of California in and for the city and county of San Francisco be suspended and stayed until the determination of said case upon said writ of error by the said Supreme Court of the United States.

And your petitioner, as in duty bound, will ever pray, etc.

H. S. BROWN,
FOSHAY WALKER,
J. E. FOULDS,
Attorneys for Plaintiff in Error, Defendant and Appellant.

Allowed Feb. 6, 1895.
W. H. BEATTY,
Chief Justice of California.

526½ [Endorsed:] 2. No. 15600. Supreme court, State of California, department No. —. The People of the State of California, d'f'd't in error, *vs.* Central Pacific Railroad Company, pl'ff in error. Petition for allowance of writ of error. Service of the within — is hereby admitted this — day of ——, A. D. 189–. ——— ——, attorney for —. Filed February 7th, 1895. T. H. Ward, clerk, by R. A. Marshall, deputy clerk. H. S. Brown, Foshay Walker, and J. E. Foulds, attorneys for pl'ff in error.

527 In the Supreme Court of the State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Defendant in Error,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Plaintiff in Error.

Assignment of Errors.

The Central Pacific Railroad Company, having petitioned said court for an order permitting it to prosecute a writ of error to the

honorable Supreme Court of the United States from the judgment made and entered in said court, now makes and files with its said petition the following, and specifies the same as its assignment of errors herein and upon which it will rely for a reversal of said judgment upon said writ:

I.

The court erred in overruling defendant's demurrer to plaintiff's amended complaint for the reason that sections 3666, 3667, 3668, 3669, and 3670 of the Political Code of the State of California, under the provisions of which said action was instituted, are unconstitutional in this, that the said sections of the Political Code are in contravention of section 1 of the XIVth amendment to the Con-
528 stitution of the United States, in that by the provisions thereof the defendant is deprived of and denied the equal protection of the laws, and because by those sections burdens are placed upon corporations operating a railroad in more than one county that are not placed upon corporations operating a railroad in only one county.

II.

The court erred in overruling the defendant's demurrer to plaintiff's amended complaint for the reason that in so far as the assessment of railroads operated in more than one county is concerned sections 4 and 10 of article XIII of the State constitution are in contravention of section 1 of the XIVth amendment to the Constitution of the United States, as thereby and thereunder persons or corporations owning such roads are deprived of property without due process of law and are denied the equal protection of the laws; hence the assessment and taxes are void.

III.

The decision of the court is against law because it appears from the evidence and findings that all of the property of the defendant upon which the taxes which are the subject of this action were assessed by the State board of equalization was at the time of said assessment subject to a lien of the United States to secure bonds issued to defendant and to a mortgage to secure bonds of defendant issued and held by individuals, some of whom were residents of the State of California, and that no deduction was made from the valuation of said property for or on account of said incumbrances, although the same were well known to said board of equali-
529 zation, but said property was assessed at its full cash value, whereas all other property in the State of California, except that owned by railroad and other quasi-public corporations, was entitled to and received in its assessment for said fiscal year a deduction from its actual cash value of the amount of any mortgage, deed of trust, contract, or other obligation by which a debt is secured then subsisting upon it; that the said property of defendant was so assessed pursuant to the provisions of section 4 of article XIII of the constitution of the State of California, which is in conflict with

the XIVth amendment to the Constitution of the United States, and by reason of the premises said assessment and the whole thereof and all taxes levied thereunder were and are null and void and of no effect, and no action can be maintained or judgment rendered therefor.

IV.

The decision of the court is against law because it appears from the findings that the defendant was at the time of the making of said assessment the owner and holder of certain franchises of great value derived from and held under and by virtue of certain acts of Congress of the United States of America, and it appears from the evidence that in estimating the value of the franchise, roadway, road-bed, rails, and rolling stock of defendant's railroad in the State of California and in making the assessment thereof under which the taxes were levied for which this action is brought the State board of equalization of the State of California included as an element of value and assessed the value of the Federal franchises aforesaid, but in making said assessment blended the same with
530 the other properties of defendant assessed by it in such a manner that it cannot be segregated therefrom, and therefore said assessment and the whole thereof and all the taxes levied thereunder and for which this action is brought are null, void, and of no effect, and no action can be maintained or judgment rendered therefor.

V.

The decision of the court is against law because it appears from the findings and evidence that in the counties of Alameda, Butte, San Joaquin, Santa Clara, Shasta, Siskiyou, Stanislaus, and Yuba certain special school taxes had been by the boards of supervisors of said several counties duly levied in various school districts thereof through which the railroad of defendant ran for the year 1887, the rates whereof were included in and formed part of the county rates of levy for that year and were levied upon the property of defendant and constitute a portion of the levies of the counties aforesaid upon which the said several county taxes sued for in this action are based; that the State board of equalization never in any manner apportioned the assessment made by it of the property of said defendant for said year to any of the school districts of either of said counties, as required by the provisions of section 10, article XIII, of the constitution of this State, but such apportionment was admitted to be made by the boards of supervisors of said several counties to their respective school districts and was and is null and void; that by reason of the premises the rates of said county levies furnished to the State controller upon which the taxes for
531 said counties sued for in this action are based and said taxes were not fixed and levied as required by the constitution and laws of this State, but are null, void, and of no effect, and no action or judgment can be maintained or rendered therefor.

VI.

The decision of the court is against law because counsel fees are allowed to plaintiff therein, whereas the complaint contains no allegation nor is there any evidence that any counsel fees have been incurred by plaintiff or that any sum or amount therefor has been audited by the State board of examiners as required by section 3668 of the Political Code of the State of California.

VII.

The decision of the court is against law because the evidence shows that the counsel fees allowed therein are not a reasonable or just compensation for legal services rendered by counsel for plaintiff in the institution and prosecution of this action, but that the same are purely speculative and contingent and are fixed at a much higher figure than the actual value of such services because entirely dependent upon the contingency of the success of the plaintiff in this action and upon the uncertainty and mere possibility of collection and upon supposed services which may hereafter be rendered by said counsel in connection with this action in other courts and places and in other proceedings which may or may not be taken or rendered.

VIII.

532 The decision of the court that plaintiff is entitled to a penalty of 5 per cent. upon the several principal sums found to be due by the findings of fact is against law for the reason that there is no evidence that any such penalty was added thereto on the 27th of December, 1887, or at any other time by the controller of State or any other officer of the State of California anthorized to impose such a penalty.

IX.

The decision of the court is against law in this: That whereas by finding of fact No. 35 it is found that in making its assessment of defendant's property for the year 1887 the State board of equalization did not include, assess, or value any franchise or corporate power held or exercised by defendant under any act or acts of Congress, yet upon a comparison of such finding of fact with the opinion of the court upon which the same is based, as set forth in the statement on motion for a new trial, it is manifestly impossible to determine therefrom whether said finding of fact is made upon consideration, the evidence tending to establish that such Federal franchise of defendant was assessed or included in the assessment of the State board of equalization of the property of defendant for the year 1887, and upon the preponderance of evidence upon that point in favor of plaintiff, or whether said finding is made upon the presumption of fact of the regularity of the proceedings of the State board of equalization, and that the same is unassailed by reason of the incompetency of all evidence upon the part of defendant tending to rebut such presumption and the consequent exclusion of such evidence from consideration by the court.

533

X.

The decision of the court is against law in this: That it appears by the findings of fact that the State board of equalization of the State of California did assess for the year 1887 the franchise of defendant, whereas it also appears from said findings that said franchise is in whole or in part held under and derived from the Government of the United States, and cannot therefore be the subject of taxation by any State, county, or municipal government.

XI.

The decision of the court is against law in this: That it appears from the findings of fact that the property of defendant assessed by the State board of equalization and upon which the taxes sought to be recovered by this action were imposed was and is subject to a lien of the United States to secure the indebtedness of defendant to it, and that the Government of the United States has an interest and ownership therein to the extent of its said lien, and by reason of the premises all of said property is exempt from taxation by any State, county, or municipality.

XII.

The decision of the court is against law because it appears that the property of defendant was assessed by the State board of equalization under the provisions of section 10 of article XIII of the constitution of the State of California, and no provision is made by said constitution for the equalization of the assessed value thereof, whereas all other property is entitled by said constitution to have its assessed value equalized by boards organized for the purpose of re-
534 viewing the action of assessors, and said provision of the constitution of the State of California is therefore unequal in its operation; denies to the defendant and other property-holders similarly situated the equal protection of the laws, and deprives the owners of their property without due process of law, and is repugnant to the first section of the XIVth amendment to the Constitution of the United States and void.

XIII.

The court erred in admitting in evidence that portion of the duplicate record of assessments of railways by the State board of equalization for the year 1887 relating to the assessment of the property of defendant for said year.

XIV.

The court erred in admitting in evidence that portion of the duplicate record of apportionment of railway assessments for the year 1887 having reference to the apportionment of the assessment of the property of defendant for the year 1887.

XV.

The court erred in permitting the witness W. W. Douglas to testify as to the non-payment of taxes by defendant.

XVI.

The court erred in permitting the witness W. W. Douglas to testify as to the non-payment of any portion of the taxes or interest or penalty.

XVII.

The court erred in permitting evidence as to the value of counsel fees to be introduced by plaintiff.

535 XVIII.

The court erred in denying defendant's motion for a nonsuit.

XIX.

The court erred in admitting in evidence Plaintiff's Exhibit 4 for the purpose stated.

XX.

The court erred in admitting in evidence Plaintiff's Exhibit 6 for the purpose stated.

XXI.

The court erred in sustaining the objection of plaintiff to the following offer of evidence, on the part of defendant, to be given by the witness L. C. Morehouse, namely:

"We offer to prove by this witness that at every session during every year of the existence of the State board of equalization, from the year 1883 and prior to the year 1888, the State board of equalization, in making its assessment of the valuation of the property of the Central Pacific Railroad Company, included in its total estimate of the value the Federal franchise held by that company by virtue of the acts of Congress of the United States which have been introduced in evidence, and that the valuation of the Federal franchise was blended with the general assessment of that company in such a manner as to be indistinguishable from it and not capable of separation."

XXII.

The court erred in permitting the following question to be put by counsel for plaintiff to the witness L. C. Morehouse, namely:

536 "Then, as a matter of fact, if the assessment against the franchise, roadway, road-bed, and rails of this company contained the Federal franchise, then the statement to you furnished by the railroad company including the same words also contained the Federal franchise?"

XXIII.

The court erred in permitting the following question to be put by counsel for plaintiff to the witness L. C. Morehouse, namely:

"And that in fixing the value which you assigned to the property represented by these words you only intended to include the property which was legally assessable under the State constitution?"

XXIV.

The court erred in sustaining plaintiff's objection to the following question to the witness E. W. Maslin, namely:

"From the various sources of knowledge which you have enumerated, please state to the court what elements were taken into consideration by the State board of equalization in making the assessment of these two companies for the year 1887."

XXV.

The court erred in sustaining the objection to the following question to the witness E. W. Maslin, namely:

"Did you hear any conversation between the members of the State board of equalization during the meeting when the assessment of this company was made for the year 1887, with reference to the elements that they proposed to and did include in the assessments?"

537 XXVI.

The court erred in sustaining the objection to the following question to the witness E. W. Maslin, namely:

"At the time that the assessment of 1887 was made by the State board of equalization upon the property of the Central Pacific Railroad Company, what was said and done at the meeting of the State board of equalization on that day in your presence?"

XXVII.

The court erred in disallowing defendant's offer of certain evidence by the witness E. W. Maslin; which offer was as follows:

"We now offer to prove by this witness that from the time of the organization of the State board of equalization in 1880 down to and including the year 1887 that board had every year considered the value of the Federal franchise—that is, the franchise derived from the United States by the acts of Congress, the Government of the United States—belonging to and owned by the Central Pacific Railroad Company as an element of value in assessing the total value of the property of that railroad company, and that in 1888, in consequence of a decision of the Supreme Court of the United States upon the subject, the State board of equalization for the first time ceased to consider this Federal franchise as an element of value, and hence reduced their valuation by the sum of $3,000,000 on the Central Pacific Railroad Company's property."

XXVIII.

538 The court erred in overruling defendant's objection to the following question put to the witness C. E. Wilcoxen, namely:

"All action taken by the board with reference to the assessment of railroads, and especially with reference to the Central Pacific Railroad Company, were made matters of record either in the minutes of the board or in the assessment book of the board, were they not?"

XXIX.

The court erred in overruling the defendant's objection to the following question put to the witness C. E. Wilcoxen, namely:

"But in regard to crossing bays or rivers or anything of that sort was that distance considered? Take, for instance, the bay of San Francisco to the Oakland mole. Did you assess that part of the bay as a portion of their road-bed?"

XXX.

The court erred in refusing to permit the witness C. E. Wilcoxen to be interrogated as to the evidence given by him before the committee on judiciary of the Assembly of the State of California on the 23rd day of February, 1889, in answer to questions of Mr. Lezynsky and Mr. Dibble.

XXXI.

The court erred in overruling the defendant's objection to the following question put to the witness John P. Dunn, namely:

"What was intended by the State board to be meant and included in the expression of 'franchise' in that statement against the railroad company?"

539 XXXII.

The court erred in overruling the defendant's objection to the following question put to the witness John P. Dunn, namely:

"Well, when this report was filed and returned as sworn to, as it appears to be, by the Central Pacific Railroad Company returning a franchise within the State of California, what did you understand or the board understand to be meant by that railroad company in using that term?"

XXXIII.

The court erred in overruling defendant's objection to the following question put to the witness John P. Dunn, namely:

"Did he or any other representative of that railroad company claim before the board at any meeting held in reference to the tax or assessment of 1887 that the word franchise, as used by it in said statement which you hold, was ambiguous in any respect and included anything more than the State franchise?"

XXXIV.

The court erred in overruling defendant's objection to the following question put to the witness John P. Dunn, namely:

"Well, did he claim that the word franchise, as returned by them describing their franchise, was ambiguous in any respect?"

XXXV.

The court erred in overruling the defendant's objection to the following question put to the witness John P. Dunn, namely:
540 "Did he claim that the words in that statement 'franchise within the State' included any Federal franchise which that road, the Central Pacific, claimed to have?"

Wherefore, by reason of the foregoing assignment of errors and the petition of the defendant, plaintiff in error herein, for leave to prosecute a writ of error herein to the Supreme Court of the United States, the plaintiff in error submits its said petition and these assignments of error and prays for an order of this honorable court allowing it to prosecute such writ to said Supreme Court of the United States.

H. S. BROWN,
FOSHAY WALKER,
J. E. FOULDS,
Attorneys for Plaintiff in Error, Defendant, and Appellant.

540½ [Endorsed:] No. 15600. 2. Supreme court, State of California, department No. —. The People of the State of California, d'f'd't in error, *vs.* Central Pacific Railroad Company, pl'ff in error. Assignment of errors. Service of the within — is hereby admitted this — day of ——, A. D. 189–. —— ——, attorney for —. Filed February 7th, 1895. T. H. Ward, clerk, by R. A. Marshall, deputy clerk. H. S. Brown, Foshay Walker, and J. E. Foulds, attorneys for pl'ff in error.

541 In the Supreme Court of the State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Respondent,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Appellant,

Order Allowing Writ of Error.

And now, on this 6th day of February, 1895, on motion of H. S. Brown, Foshay Walker, and J. E. Foulds, of counsel for appellant, it is ordered that a writ of error herein be, and is hereby, allowed, and that in order to stay execution pending the writ of error the appellant shall file a supersedeas bond in the sum of seven hundred and twenty thousand dollars.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

541½ [Endorsed:] No. 15600. 2. Supreme court, State of California, department No. —. The People of the State of California, respondent, *vs.* Central Pacific Railroad Company, appellant. Order allowing writ of error. Service of the within — is hereby admitted this — day of ——, A. D. 189–. —— ——, attorney for

—. Filed February 7th, 1895. T. H. Ward, clerk, by R. A. Marshall, deputy clerk. H. S. Brown, Foshay Walker, and J. E. Foulds, attorneys for appellant.

542 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the justices of the supreme court of the State of California, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of California, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The People of the State of California and The Central Pacific Railroad Company, wherein was drawn in question the validity of a statute of or an authority exercised under the United States and the decision was against its validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of its being repugnant to the Constitution or laws of the United States, and the decision was in favor of such its validity, or wherein was drawn in question the construction of a clause of the Constitution or of a statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, statute, or commission, a manifest error hath happened, to the great damage of the said Central Pacific Railroad Company, as by its com-
543 plaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 6th day of April, 1895, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 6th day of February, in the year of our Lord one thousand eight hundred and ninety-five.

[Seal U. S. Circuit Court, Northern Dist. Cal.]

W. J. COSTIGAN,
Clerk of the Circuit Court of the United States
in and for the Ninth Judicial Circuit
and Northern District of California.

Allowed this 6th day of February, 1895.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

544 I hereby certify that a copy of the foregoing writ of error was, on the 7 day of Feb'y, 1895, lodged in the clerk's office of said supreme court of the State of California for the said defendant in error.

Dated this 7 day of Feb'y, 1895.

[Seal Supreme Court of California.]

T. H. WARD,
Clerk of the Supreme Court of the State of California,
By R. A. MARSHALL, *Deputy.*

544½ [Endorsed:] No. 15600. 1. —— court, department No. —. The People of the State of California, def't in error, *vs.* Central Pacific Railroad Company, pl'ff in error. Writ of error. Service of the within — is hereby admitted this — day of ——, A. D. 189–. ——, attorney for —. Filed Feb. 7, 1895. T. H. Ward, clerk, by R. A. Marshall, deputy. H. S. Brown, Foshay Walker, and J. E. Foulds, attorneys for pl'ff in error.

545 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the People of the State of California, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington, in the District of Columbia, on the 6th day of April, 1895, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California wherein The Central Pacific Railroad Company, a corporation, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. H. Beatty, chief justice of the supreme court of the State of California, this 6th day of Feb'y, 1895.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

545½ [Endorsed:] No. 15600. 1. Supreme court, State of California, department No. —. The People of the State of California, d'f'd't in error, *vs.* Central Pacific Railroad Company, pl'ff in error. Citation. Service of the within citation is hereby admitted this 7th day of *of* February, A. D. 1895. Langhorne & Miller, attorneys for def't in error. Filed Feb. 7, 1895. T. H. Ward, clerk, by R. A. Marshall, deputy. H. S. Brown, Foshay Walker, and J. E. Foulds, attorneys for pl'ff in error.

546 *Bond.*

In the Supreme Court of the State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Defendant in Error,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Plaintiff in Error.

Know all men by these presents that we, Central Pacific Railroad Company, as principal, and A. N. Towne and Wm. H. Crocker, as sureties, are held and firmly bound unto the People of the State of California in the full and just sum of seven hundred and twenty thousand dollars; for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 7th day of February, 1895.

Whereas the said action was originally brought in the s-
547 perior court of the State of California in and for the city and county of San Francisco on the 2nd day of January, 1891, and on the 16th day of February, 1891, the defendant filed its demurrer therein; and on the 12th day of September, 1892, the said demurrer was overruled; and on the 12th day of October, 1892, by leave of the court, the said defendant filed its answer therein; and thereafter, on the 19th day of November, 1892, and the 11th day of January, 1893, by leave of the court, said defendant filed certain amendments to said answer; and on the 9th day of January, 1893, said case came on regularly for trial on the issues raised by said complaint and answer as amended before the court, without a jury, a jury having been waived by the parties, and was tried and submitted to the court for decision; and thereafter, to wit, on the 3rd day of February, 1893, the court made, signed, and filed its written findings of fact and conclusions of law therein in favor of said plaintiff and against said defendant; and thereafter, on the 3rd day of February, 1893, judgment was entered pursuant to said findings in favor of said plaintiff and against said defendant for the sum of $295,740.71, with interest thereon from the 27th day of December, 1887, at the rate of seven per cent. per annum to date, amounting to $105,579.42, together with 5 per cent. upon said principal sum, amounting to $14,786.95; also for the sum of $22,180.56, as and for the counsel fee earned by Langhorne & Miller, as attorneys for plaintiff therein, and also the further sum of $7,393.51, as and for the counsel fee earned by A. R. Cotton, attorney for plaintiff therein, and for said plaintiff's costs and disbursements, amounting to the sum of $42.16, and

within the time allowed by law the said defendant served and
548 filed its notice of intention to move for a new trial, and its statement on motion for a new trial was duly settled by the court and filed in said case, and said motion for a new trial was thereafter made and submitted to the court for decision, and on the 23rd day of June, 1893, the court, by an order duly made and en-

tered, overruled and denied said motion for a new trial, and on the 11th day of July, 1893, said defendant duly appealed from said judgment and from said order denying said motion for a new trial to this honorable court, which, on the 6th day of January, 1895, modified said judgment by striking out therefrom the said sum of $105,579.42, allowed therein for interest, and the sum of $7,393.51, allowed therein for counsel fees earned by A. R. Cotton, and then and there affirmed said judgment as so modified and said order denying a new trial;

And whereas upon the 6th day of February, 1895, the said Central Pacific Railroad Company filed in said supreme court of the State of California its petition for an order allowing it to prosecute a writ of error to the Supreme Court of the United States and for an order of said court fixing the amount of security which it shall be required to give to the plaintiff in said action pending the prosecution of said writ of error, to operate as a supersedeas and stay of execution until said writ of error shall have been heard and determined in the said United States Supreme Court;

And whereas upon the 6th day of February, 1895, the said supreme court of the State of California, upon said petition duly
549 made and had, entered of record in said court an order allowing a writ of error in said action in favor of said Central Pacific Railroad Company, plaintiff in error, from said judgment to the Supreme Court of the United States, and in said order also fixed the amount of the security which the said above-bounden principal should be required to give pending the determination of said cause in said Supreme Court of the United States and to stay execution herein in the sum of seven hundred and twenty thousand dollars;

Now, the condition of this obligation is such that if the said Central Pacific Railroad Company shall prosecute said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise it shall remain in full force and effect.

[Corporate Seal.]

CENTRAL PACIFIC RAILROAD COMPANY,
By W. M. THOMPSON, *Secretary.*
A. N. TOWNE.
WM. H. CROCKER.

550 STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

A. N. Towne and Wm. H. Crocker, being duly and separately sworn, each for himself and not for the other says: I am one of the sureties upon the above undertaking, and reside in the city and county of San Francisco, State of California, and am a householder therein. I am worth the sum of seven hundred and twenty thousand dollars in property situated in said State of California over and above all my just debts and liabilities, exclusive of property exempt from execution.

A. N. TOWNE.
WM. H. CROCKER.

Subscribed and sworn to before me this 7th day of February, 1895.

[NOTARIAL SEAL.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

551 The above bond upon writ of error is hereby approved and execution stayed pending the determination of said writ.
Dated this 7th day of February, 1895.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

551½ [Endorsed:] 2. No. 15600. Supreme court, State of California, department No. —. The People of the State of California, d'f'd't in error, *vs.* Central Pacific Railroad Company, pl'ff in error. Bond. Service of the within — is hereby admitted this — day of ——, A. D. 189–. —— ——, attorney for —. Filed February 7th, 1895. T. H. Ward, clerk, by R. A. Marshall, deputy clerk. H. S. Brown, Foshay Walker, and J. E. Foulds, attorneys for pl'ff in error

552 *Return to Writ of Error.*

The answer of the judges of the supreme court of the State of California to the foregoing writ of error.

The record and all proceedings of the plaintiff whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the honorable the Supreme Court of the United States within mentioned at the day and place within named in a certain schedule to this writ annexed, as within we are commanded by the court.

[Seal Supreme Court of California.]

T. H. WARD,
Clerk of the Supreme Court of the State of California,
By A. W. JOHNSON,
Deputy Clerk.

552½ [Endorsed:] 1. No. —. Supreme court, State of California, department No. —. The People of the State of California, d'f't in error, *vs.* Central Pacific Railroad Company, pl'ff in error. Return to writ of error. Service of the within — is hereby admitted this — day of ——, A. D. 189–. —— ——, attorney for —. Filed —— —, 189–. —— ——, clerk, by —— ——, deputy clerk. H. S. Brown, Foshay Walker, and J. E. Foulds, attorneys for pl'ff in error.

553 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *ss:*

I, T. H. Ward, clerk of the supreme court of the State of California, by virtue of the foregoing writ of error and in obedience thereto,

do hereby certify that the foregoing pages, numbered from 1 to 552, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The People of the State of California, defendant in error, *vs.* Central Pacific Railroad Company, plaintiff in error, as the same remain of record and on file in said office; also that the citation, writ of error, and return to writ of error attached hereunto are the original citation, writ of error, and return to writ of error issued in said cause.

In witness whereof I have caused the seal of the supreme court of the State of California to be hereunto affixed, at the city and county of San Francisco, in the State of California, this 27th day of February, 1895.

[Seal Supreme Court of California.]

T. H. WARD,
Clerk of the Supreme Court of the State of California,
By A. W. JOHNSON,
Deputy Clerk.

554 [Endorsed:] 1. No. 15600. Supreme court, State of California, department No. —. The People of the State of California, d'f'd't in error, *vs.* Central Pacific Railroad Company, pl'ff in error. Clerk's certificate. Service of the within — is hereby admitted this — day of ——, A. D. 189–. —— ——, attorney for —. Filed —— —, 189–. —— ——, clerk, by —— ——, deputy clerk. H. S. Brown, Foshay Walker, and J. E. Foulds, attorneys for pl'ff in error.

Endorsed on cover: Case No. 15,831. California supreme court. Term No., 559. The Central Pacific Railroad Company, plaintiff in error, *vs.* The People of the State of California. Filed March 15, 1895.

Office Supreme Court U. S.
FILED
JAN 13 1896
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 559.

THE CENTRAL PACIFIC RAILROAD COMPANY,
Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

In Error to the Supreme Court of the State of California.

BRIEF FOR THE PLAINTIFF IN ERROR.

J. HUBLEY ASHTON,
CHARLES H. TWEED,
of Counsel for Plaintiff in Error.

McGILL & WALLACE, LAW PRINTERS, Washington, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1895

No. 559.

THE CENTRAL PACIFIC RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

In Error to the Supreme Court of the State of California.

Brief for the Plaintiff in Error.

Statement of the Case.

This is a writ of error to a judgment of the Supreme Court of the State of California, affirming a judgment of the Superior Court of the City and County of San Francisco, and affirming an order of the Superior Court denying a new trial, in an action brought in the name of the People of the State of California against the Central Pacific Railroad Company, under Section 3670 of the Political Code of that State, to recover a certain sum of money alleged to be due the State for taxes, and also various other sums

of money, alleged to be due eighteen counties of the State for taxes, for the fiscal year 1887, upon an assessment by the State Board of Equalization.

The Assessment, Levy and Collection of Taxes on Railroads operating in more than one County in California.

Many of the provisions of the Constitution of California, adopted in 1879, and of the Political Code of that State, in force in 1887, relative to the assessment, levy and collection of State and county taxes upon the *franchise, roadway, roadbed, rails, and rolling stock of railroads operated in more than one county in that State*, are printed in the margin in *California* v. *Pacific Railroad Companies*, decided by this Court April 30, 1888, after the assessment in question in the present case was made. (127 U. S., 1, 2–12.)

The provisions of the State Constitution on the subject of revenue are found in Article XIII, and comprise the whole law of the Constitution on the subject of the assessment of property for purposes of taxation, and of the levy and collection of taxes.

Section 4 of that Article provides: "A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other *quasi* public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to

the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situate."

Section 9 of Article XIII provides: "A State Board of Equalization, consisting of one member from each Congressional District in this State, shall be elected by the qualified electors of their respective districts at the general election to be held in the year 1879, whose term of office, after those first elected, shall be four years, whose duty it shall be to equalize the valuation of the taxable property of the several counties in the State for the purposes of taxation." (Constitution of California, Statutes and Amendments to Codes of California, 1891, p. XXXIII, *et seq.*)

Section 10 of Article XIII provides that all property shall be "assessed" in the county, city and county, town, township, or district in which it is situated, in the manner prescribed by law, *except* that:

> "*The franchise*, roadway, roadbed, rails, and rolling stock of *all railroads* operated in more than one county in this State shall be *assessed* by the State Board of Equalization at their actual value, and the same shall be apportioned to the counties, cities, towns, townships, and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities, towns, townships, and districts."

Section 13 of Article XIII declares: "The Legislature shall pass all laws necessary to carry out the provisions of this article."

The Legislature of California has provided: 1st. A general scheme for the assessment, levy, and collection

of money, alleged to be due eighteen counties of the State for taxes, for the fiscal year 1887, upon an assessment by the State Board of Equalization.

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Section 10 of Article XIII provides that all property shall be "assessed" in the county, city and county, town, township, or district in which it is situated, in the manner prescribed by law, *except* that:

> "*The franchise*, roadway, roadbed, rails, and rolling stock of *all railroads* operated in more than one county in this State shall be *assessed* by the State Board of Equalization at their actual value, and the same shall be apportioned to the counties, cities, towns, townships, and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities, towns, townships, and districts."

Section 13 of Article XIII declares: "The Legislature shall pass all laws necessary to carry out the provisions of this article."

The Legislature of California has provided: 1st. A general scheme for the assessment, levy, and collection

of taxes; and, 2d. A special scheme for the assessment, levy, and collection of taxes on railroads situated in more than one county. (People *v.* Central Pacific R. R. Co., 83 Cal., 393, 403.)

By Section 3628 of the Political Code of the State "*the franchise*, roadway, roadbed, rails, and rolling stock of all *railroads* operated in more than one county in this State, shall be assessed by the State Board of Equalization, as hereinafter provided for."

The special legislative scheme for the assessment, levy, and collection of taxes on railroads operated in more than one county in the State, is found in *Sections 3664 to 3671* of the Political Code of California.

By Section 3665 of that Code, as amended March 9, 1883, it is provided that the State Board of Equalization shall meet at the State Capitol on the first Monday in August, and continue in open session until the third Monday in August; that at such meeting the Board must assess *the franchise*, *roadway*, *roadbed*, *rails*, *and rolling stock* of all railroads operated in more than one county; that the assessment must be made upon the entire railway within the State, and must include the right of way, bridges, culverts, wharves, and moles upon which the track is laid, and all steamers engaged in transportation across waters which divide the road; and that within ten days after the third Monday of August the Board must apportion the total assessment of the franchise, roadway, roadbed, rails, and rolling stock of each railway to the counties, or cities and counties, in which such railway is located, in proportion to the number of miles of railway laid therein.

The Board must transmit to the County Auditor of each county, or city and county, a statement showing, among other things, the amount apportioned to the county, or city and county.

Section 3666 requires the Board to prepare each year, duplicates of the "record of assessment of railways" and "record of apportionment of railway assessments," and transmit the two duplicates to the Controller of State.

Section 3667 requires the Board of Supervisors of each county, and city and county, to transmit to the Controller a statement of the rate of taxation levied by it for the county, or city and county, taxation, and the Controller must compute and enter in separate money columns in the "duplicate record of apportionment of railway assessments," the sums to be paid by the corporation as the State tax on the total amount of the assessment, and also the county, or city and county, tax on the apportionment of the assessment to each county, and city and county.

The other sections of the Political Code in respect to railroads operated in more than one county, referred to, are Sections *3668*, *3669*, *and 3670*, which relate particularly to the *collection* of the taxes as assessed and levied under Sections 3665, 3666, and 3667, upon the franchise, roadway, roadbed, rails, and rolling stock of such railroads.

These sections establish a special scheme for the collection of taxes upon the property of railroad companies operating in two or more counties, which is totally different from the general system of law established by the

Political Code of California for the collection of taxes, by which State and county taxes are payable to and are to be collected by the tax collectors of the several counties, and in case of delinquency the tax is to be collected by the sale of the property assessed or upon which the tax is a lien.

According to the special scheme of Sections 3668, 3669, and 3670, taxes upon the franchise, roadway, roadbed, rails, and rolling stock of railroads operated in more than one county, are payable only to the State Treasurer, and are to be collected, in case of delinquency, by an action brought by the Controller in the name of the people of the State.

In such action the State may recover, by a special form of complaint, prescribed in § 3670, the taxes due to the several Counties, as well as those due to the State; may have an *attachment*, as of course, against all the property of the defendant; may recover counsel fees, even if the tax is paid before judgment; and no evidence other than the assessment itself is necessary to entitle the plaintiff to recover.

The Supreme Court of California, in *People* v. *Central Pacific Railroad Co.* (83 Cal., 394, 406), referring to this legislation, said: "But this legislation also provides a mode of *collection* differing from that found in the general law on the subject; not necessary for the purpose of carrying into effect any of the provisions of Article 13 of the Constitution; and '*special*' because not applicable to all property, or even to railroad property generally, but only to such railroad property as is situate or operated in two or more counties. For this

reason it is in direct conflict with, and is specially forbidden by, subdivision 10 of Section 25 of Article 4 of the Constitution. It is therefore void, and furnishes no cause of action upon which suit can be maintained under it."

By Section 25 of Article 4 of the Constitution of California the Legislature is prohibited from passing "local or special laws in any of the following enumerated cases; that is to say * * * *3. Regulating the practice of Courts of justice.* * * * *10. For the assessment or collection of taxes.*"

This Court, in *Santa Clara County* vs. *Southern Pacific Railroad Company* (118 U. S., 394), decided in 1886, adjudged that as the State Board of Equalization, in its assessments against the Central Pacific Railroad Company, and the Southern Pacific Railroad Company, respectively, for the year 1881, included the "fences" between the railroads of the companies and the lands of adjoining proprietors, which the Board had no jurisdiction or power to assess for taxation, the assessments, as made, were invalid and void.

The State Board of Equalization, in its assessments of the property of the Central Pacific Railroad Company, in 1883 and 1884, having included, under section 3665 of the Political Code, as amended March 9, 1883, "all steamers engaged in transporting passengers and freight across waters which divide the road," this Court, in *California* v. *Pacific Railroad Co.* (127 U. S., 1, 34), adjudged that the assesments were in violation of the Constitution of California, which authorized that

Board to assess only the franchise, roadway, roadbed, rails, and rolling stock of the Company.

This Court further adjudged, in that case, that as the assessments by the State Board of Equalization against the Central Pacific Railroad Company, in 1883 and 1884, and the assessment against the Southern Pacific Railroad Company, in 1883, included the franchises conferred by the United States upon those companies, respectively, the assessments were void as repugnant to the Constitution and laws of the United States and the power of Congress to regulate commerce among the several States. (127 U. S., 2, 41, 42, 45.)

The Complaint in this Action.

The record shows that on January 2, 1891, an amended complaint was filed by the Controller of the State of California in the Superior Court of the City and County of San Francisco, in an action brought in the name of the State against the Central Pacific Railroad Company, under Section 3670 of the Political Code, for the recovery of the State and County taxes alleged to be due upon the assessment of the property of the defendant company, by the State Board of Equalization, for the fiscal year 1887, ending June 30, 1888; the assessment being $18,000,000, and the taxes amounting, as claimed, to the sum of $294,740.71. (Amended Complaint, Record, pp. 1–57).

The assessment of the franchise, roadway, road-bed, rails, and rolling stock of the defendant's railroad for the year 1887, sued on in this action, was precisely the same in form and amount as the assessment of the company's

property for the year 1883, which was held by this Court to be *void* in *California* v. *Pacific Railroad Company* (*supra*).

The complaint in this action contains nineteen counts upon nineteen alleged causes of action. The first count is for State taxes; the other counts are for *County* taxes in eighteen different counties of the State.

The form of the present complaint, as divided into separate counts, was no doubt devised by the counsel of the State, with the view of avoiding, if possible, the effect of the decision of the Supreme Court of the State in *People* v. *Central Pacific Railroad Co.* (83 Cal., 393, 399), which expressly adjudged Section 3670 of the Political Code, prescribing a special form of complaint, to be unconstitutional, and that a complainant in an action to recover taxes levied upon a railroad can not properly join causes of action in favor of the several counties through which the road runs.

Each count of this complaint avers:

"That the defendant is, and was at all times herein mentioned, a corporation organized and existing under the laws of the State of California, engaged in operating a railroad in more than one county in said State."

The complaint, in the several counts, alleges—

"That on the 13th day of August, 1887, the State Board of Equalization of said State for the purposes of State and county taxation for the fiscal year ending June 30, 1888, did assess to defendant, then the owner and operator thereof in more than one county in said State, *the franchise, roadway, roadbed, rails, and rolling-stock of defendant's railroad*, then situated and being within said State, at the sum of eighteen million dollars.

The first count for State taxes proceeds to aver :

"IV. That within ten days after the third Monday in August, 1887, said State Board of Equalization did apportion the said total assessment of the franchise, roadway, roadbed, rails, and rolling-stock of defendant to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties; and the amounts of said total assessment so apportioned by said Board to said counties respectively, and the number of miles of defendant's railway laid in said counties respectively, were as follows, to wit :

"To county of Alameda, $2,089,451. Railway laid therein, 83.52 miles."

[Here follows a statement in similar form as to each of the other eighteen counties.]

"*V.* That within ten days after the third Monday in August, 1887, said Board did transmit to each of the county auditors of said counties a statement showing the length of the main track of defendant's railway track within the counties of said auditors respectively, including the right of way, the assessed value per mile of the same, as fixed by said *pro rata* distribution per mile of the said assessed value of the whole franchise, roadway, roadbed, rails, and rolling stock of defendant's railway in said State, and the amount apportioned to the counties of said auditors respectively.

"*VI.* That prior to the first Monday in October, 1887, the County Auditor of each of said counties did enter said statement so transmitted to him upon the assessment-roll of his county, and did enter upon said assessment-roll of his county the said amount of said assessment apportioned by said State Board of Equalization to his county in the column of the assessment-roll of his county which showed the total value of all property of his county for taxation, &c.

"*VII.* That on the first Monday of October, 1887, the Board of Supervisors of each of said counties did levy the

State tax of the said State of California according to the amount theretofore fixed for the State tax for the fiscal year ending June 30, 1888, by said State Board of Equalization, upon the taxable property in its county, including the property of defendant assessed and apportioned to its county as aforesaid, and the taxes so levied in all of said counties for the purposes of State taxation upon said property of the defendant assessed and apportioned to said counties as aforesaid was the sum of $108,440.

"*VIII.* That upon the 17th day of September, 1887, said State Board of Equalization did fix the rate of State taxation for the fiscal year ending June 30, 1888, at the rate of $0.608 on each one hundred dollars.

"*IX.* That defendant has never paid said State tax, amounting to the sum of $109,440. The said tax became delinquent on the last Monday in December, 1887, and five per cent. of said State tax, to wit, the sum of $5,472 was, by the Controller, added to said State tax, and no part of said sum so added for delinquency has been paid by defendant.

"*X.* That prior to the third Monday of October, 1887, the said State Board of Equalization did prepare and transmit to the Controller of said State a duplicate record of assessment of railways, and a duplicate record of apportionment of railway assessments for the fiscal year ending June 30, 1888, which included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the said counties.

"Before the fourth Monday of October, 1887, said Controller did compute at the rates of taxation fixed and levied as aforesaid, and enter in separate money columns in the said duplicate record of apportionment of railway assessments the respective sums, in dollars and cents, to be paid by the defendant as the State tax upon the total amount of said assessment, and as the county tax upon the apportionment of said assessment to each county, of the property assessed to defendant named in said duplicate record. That within ten days after the fourth Monday in October, 1887, said Controller did publish for two

weeks a notice that he had received from said State Board of Equalization said duplicate records, and that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, and that unless paid to the State Treasurer at the Capitol prior thereto, five per cent. would be added to the amount thereof.

"That a reasonable compensation for legal services by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the tax in this cause of action alleged to be delinquent." (Record, pp. 1–10.)

The other eighteen counts of the complaint, as stated, are for the county taxes in the several counties.

Each of these counts avers, that within ten days after the third Monday in August, 1887, the State Board of Equalization apportioned the total assessment of $18,000,000 for "the franchise, roadway, roadbed, rails and rolling stock of defendant, to the counties in said State in which defendant's railway was located, in proportion to the number of miles of defendant's railway laid in such counties;" the amount of the total assessment so apportioned by the Board to the particular county named; that prior to the first Monday in October, 1887, the County Auditor of said county entered upon the assessment-roll of the county the said amount of said assessment apportioned by the State Board of Equalization to the county, in the column of the said county assessment-roll, showing the total value of all property of said county for taxation; that on the first Monday in October, 1887, the Board of Super-

visors of the said county levied the county taxes upon the taxable property of the county, including the property of the defendant, assessed and apportioned to the county as aforesaid, and the tax so levied for the purposes of said county taxation for the fiscal year ending June 30, 1888, upon said property of the defendant, assessed and apportioned to said county as aforesaid, was the sum of ——— [stating the amount]; that the defendant has not paid the said tax, which became due and delinquent on the last Monday in December, 1887, and the Controller of the State added to said tax five per cent. of the same; that prior to the third Monday of October, 1887, the State Board of Equalization transmitted to the Controller of the State a "duplicate record of assessment of railways," and a "duplicate record of apportionment of railway assessments" for the year ending June 30, 1888, which included the said assessment of defendant's said property, and the said apportionment of the assessment of defendant's property to the particular county named; that before the fourth Monday of October, 1887, the Controller computed at the rate of taxation fixed and levied as aforesaid, and entered in separate money columns in the said duplicate record of apportionment of railway assessments, the respective sums, in dollars and cents, to be paid by the defendant as the State tax upon the total amount of said assessment and as the county tax upon the apportionment of said assessment to each county, of the property assessed to defendant, named in said duplicate record; that within ten days after the fourth Monday in

October, 1887, the Controller published a notice that the said taxes were then due and payable, and would become delinquent on the last Monday in December, 1887, and that unless paid to the State Treasurer prior thereto five per cent. would be added to the amount thereof; and "that a reasonable compensation for legal services by Langhorne & Miller, attorneys for plaintiff, in the institution and prosecution of this cause of action, is a sum equal to ten per cent. of the taxes in this cause of action alleged to be delinquent." (Rec., pp. 10–56.)

The plaintiff demands judgment for the several sums of State and county taxes delinquent and unpaid, as stated in the complaint, aggregating the sum of $295,-740.71, with five per cent. thereon for delinquency and non-payment, and with interest on said sum at the rate of two per cent. per month, from the last Monday of December, 1887, the time of such delinquency; also for the costs of suit, and for its attorneys' fees, as allowed by law. (Record, p. 57.)

It will be observed that nowhere is it averred in this complaint that the "*franchise*" assessed to the defendant by the Board of Equalization, on August 13, 1887, as alleged, was the so-called *State franchise*, or *the franchise derived from the State of California*, or that *no Federal franchise* was assessed by the Board for taxation to the defendant, or that the Board did *not* include in the assessment the value of all franchises and corporate powers held and exercised by the defendant corporation.

The Demurrer.

To this complaint a demurrer, both general and on certain special grounds, was interposed by the defendant. (Rec., pp. 57–59.)

The Superior Court overruled the demurrer, with leave to answer the complaint. (*Ib.*, p. 59.)

The Answer.

The answer puts in issue most of the material allegations of the complaint, and sets up various special and affirmative defences. (Answer, Rec., pp. 59–131.)

One of these defences is that the "franchise" assessed to the defendant by the State Board of Equalization was derived by the defendant from the Government of the United States through certain Acts of Congress (commonly known as the Pacific Railroad Acts); that the same is held and used by the defendant as one of the means and instrumentalities of the Federal Government, and was, therefore, not taxable by the State; that the assessment of this franchise was so blended with the whole assessment as not to be separable therefrom; and that the whole assessment was, therefore, void.

The answer contains, among other averments, the following:

"XXXI.

"*Corporate powers in part derived from Acts of Congress.*

"And defendant, upon its information and belief, avers, that if by virtue of the several Acts of Con-

gress herein referred to, it did not become a Federal corporation, yet it holds, under the Government of the United States, all the corporate powers and franchises granted to it by the said several Acts of Congress as the trustee of the said Government, and for the governmental uses and purposes specified in said Acts.

"XXXII.

"*That the Franchise of Defendant is not Subject to State Taxation.*

"Under and by virtue of the said several acts of Congress hereinbefore referred to, the defendant was, by the Government of the United States, selected as the means and instrument of that Government to construct the railroad hereinbefore described, and to keep and maintain the same in repair, to the end that the said Government might, when occasion required, use the same for the transportation of its armies and military stores, and for such other purposes as said Government might, in the execution of its powers, desire to use the same. The Government of the United States has never given to the State of California the right to lay any tax upon the franchise, existence, or operations of defendant. Such a tax would hinder and impede the lawful operations of the Government of the United States; would hinder, delay, and prevent the defendant from performing, as aforesaid, its obligations to the United States, and would nullify and prevent the enforcement of the said several acts of Congress.

"XXXIII.

"*Whole Franchise Assessed.*

"Said pretended assessment made by the State Board of Equalization is upon all of the franchises of defendant, and the said Board, in valuing the same, included the value of all the franchises and corporate powers held and exercised by defendant under said acts of Congress.

"XXXIV.

"*Tax upon the Franchise Blended with Tax upon Other Property.*

"The State board of equalization, in making said pretended assessment, included and assessed the franchise of defendant, and in making said pretended apportionment included in the valuation affixed to the property of defendant the value thereof, but such value is not separately stated in said apportionment, nor upon any assessment roll or delinquent list of said county, but such value is in said pretended apportionment and upon the assessment roll and delinquent list of said county, blended with the values affixed to the roadway, roadbed, etc., and can not on either be distinguished or separated from such other values, and the tax upon said franchise is in like manner blended with and can not be separated from the tax on said roadway, roadbed, etc.

"XXXV.

"*Valuation Excessive.*

"Neither the franchise, roadway, roadbed, rails, or rolling stock were assessed by the State board of equalization in said pretended assessment at their actual value, or in proportion to their value, but were wilfully and intentionally assessed greatly in excess and out of proportion to such value, and greatly in excess of and out of proportion to the rate at which all other property in said State is valued for the purposes of taxation, to wit, one hundred per cent. in excess thereof.

"XXXVI.

"*Sole Authority upon which Tax is Based.*

"Said pretended assessment is the only assessment of said property, and the pretended tax, for non-payment of which this action is brought, is founded upon said pretended assessment and upon no other assessment." (Rec., pp. 118, 119.)

The Evidence at the Trial.

The evidence, in the case, appears by the allowed and settled "*Statement on Motion for a New Trial.*" (Rec., pp. 144–259.)

The Plaintiff's Evidence.

The plaintiff, on the trial, was allowed, by the Court, against the defendant's objection, to introduce in evidence—(1) the "*Duplicate Record of Assessments of Railways by the State Board of Equalization for 1887*," filed in the office of the Controller of the State of California, October 11, 1887, and (2) the "*Duplicate Record of Apportionment of Railway Assessments for 1887*," filed in that office, October 11, 1887. (Exhibit 1, Rec., p. 145; Exhibit 2, *ib.*, p. 149.)

The defendant objected to the admission in evidence of these papers, and each of them, when offered by the plaintiff, but the Court overruled its objections, and admitted the papers in evidence; and the defendant duly excepted to the ruling of the Court. (Rec., pp. 144, 145, 152.)

The plaintiff's *Exhibit 1, the duplicate record of assessment of railways*, dated August 13, 1887, states that, it appearing that the defendant owns a certain railroad, within this State, operated in more than one county, "being the entire railway of said company within this State:

"And it appearing that the actual value of *the franchise*, roadway, roadbed, rails and rolling stock of said company, within this State, at the said date and time in March [the first Monday in March, 1887, at 12 o'clock

meridian, of that day], was, and still is, the sum of eighteen million dollars;

"Therefore, it is hereby ordered that *the said franchise*, roadway, roadbed, rails and rolling stock, for the year 1887, be, and the same are hereby, assessed to the said Central Pacific Railroad Company at the sum of eighteen million dollars." (Rec., pp. 145, 148.)

The plaintiff's Exhibit 2, *the duplicate record of apportionment of railway assessments*, dated August 22, 1887, states that the Board apportioned—

"The total assessment of *the franchise*, roadway, roadbed, rails, and rolling stock of each railroad assessed by it on the 13th day of August, 1887, for the year 1887, to the counties and the City and County of San Francisco in proportion to the number of miles of railway laid in each county, and in the City and County of San Francisco, which apportionment is set out in the following table."

The following table states the name of the corporation to which a railway is assessed as "Central Pacific Railroad Company," and in the column entitled "total assessment of *the franchise*, roadway, roadbed, rails, and rolling stock of each railway assessed for purposes of State taxation," the amount entered against that company is $18,000,000. (Rec., pp. 149, 150.)

The plaintiff was also allowed, against defendant's objection, to introduce parol evidence to prove that the taxes sued for had not been paid. (Rec., pp. 152, 153.)

The evidence above mentioned was the only evidence offered by the plaintiff in support of any of its causes of action.

The plaintiff, on its claim for counsel fees, introduced, against defendant's objection, certain evidence as to the services rendered by Messrs. Langhorne & Miller, and

Mr. A. R. Cotton, in this case, and the value of such services. (Rec., pp. 153–162.)

The counsel of the defendant then moved for a nonsuit, but the motion was denied, and the defendant excepted to the ruling of the Court. (Rec., p. 162.)

The Defendant's Evidence.

On the part of the *defendant*, evidence was offered to show that the State Board of Equalization knowingly and intentionally included the value of the "*Federal franchise*" in the assessment in question, as it had done in the assessment which was afterward before this Court, and declared *void*, in *California* v. *Pacific Railroad Company*, and in other assessments.

Some of this evidence was admitted and some rejected by the trial Court.

It appears, however, that the trial Court, in deciding the case, finally disregarded all of the evidence on that subject, except that furnished by the *record* of the proceedings of the State Board of Equalization, which it called a "deliberative body," upon the ground that the evidence was incompetent, and that such *record* was conclusive on the *issue presented that the assessment included the Federal franchise.* (Rec., pp. 224, 225.)

The plaintiff introduced certain testimony in rebuttal on that issue.

The defendant called as witnesses, C. M. Coglan, the clerk of the State Board of Equalization; L. C. Morehouse, a member of the Board since 1883; and E. W. Maslin, who was the secretary of the Board from April, 1880, to March, 1891.

Mr. Coglan produced, and defendant read in evidence, the original minutes of the State Board of Equalization relating to the assessment of the property of the Central Pacific Railroad Company for the year *1888*, showing that *after* the decision of this Court in *California* v. *Pacific Railroad Co.* the Board assessed the franchise of the company *derived from the State of California* at $1,250,000, and that the Board, on August 17, *1888*, "having in consideration the question of the *franchise derived from the State of California*, the roadway, roadbed, and rolling stock of the Central Pacific Railroad Company within the State for the year *1888*, assessed the *franchise derived from the State of California*, the roadway, roadbed, and rolling stock of said company within said State at the total sum of $15,000,000." (Coglan, Rec., pp. 163, 164.)

The minutes of the State Board of Equalization relating to the assessment of railroad property for the year 1888 disclose the fact that the Attorney-General of California advised the Board to make a special *exception* of any *Federal* franchise in the assessment for that year, in view of the decision rendered by this Court in April, 1888. (Rec., p. 163.)

The record states as follows :

"Counsel for defendant then read in evidence, from page 27 of the volume identified by the witness (Mr. Coglan) as the minutes of the proceedings of the State Board of Equalization, the following matter therein contained, under date of Friday, August 17, 1888:

"The board met. Present: C. E. Wilcoxen, L. C. Morehouse, G. E. Sloss, John P. Gaffey, J. P. Dunn.

"On motion, all railroad companies having appeared, or notified the Board that they would not appear, the

Board proceeded to assess the railroads of the State operated in more than one county.

* * * * * * *

"The Board invited the Attorney-General to be present to consult with the Board in reference to the assessment of the railways, so as to have the same conform to the decision of the United States Supreme Court lately rendered in the railroad tax cases. *He recommended that the franchises of the Central Pacific and Southern Pacific Companies, derived from the State, be assessed, and that the valuation thereof be stated separately in the record of assessments;* that the Board assess the moles, bridges, and culverts of each road separately, and, in respect to certain railroad companies, to declare that the *steamers used in operating the roads were not assessed*, that is to say, that the assessment before made be divided, so as to show the value placed upon the *State franchise of the Central Pacific and Southern Pacific Companies*, and upon the moles, bridges, and culverts of each road assessed. Whereupon the Board proceeded to make such assessments, and it was ordered as follows: That *the franchise of the Central Pacific Company derived from the State of California be assessed at $1,250,000; that the franchise of the Southern Pacific Company derived from the State of California* be assessed at $1,000,000; that the moles, culverts, bridges, and wharves upon which the tracks of the Central Pacific are laid be assessed at $1,000,000; that the moles, culverts, bridges, and wharves upon which the tracks of the Southern Pacific are laid be assessed at $400,000.

"The witness produces and identifies the original record of the assessment of the Central Pacific Railroad Company made by the State Board of Equalization for the year 1888, which was offered in evidence on the part of defendant. Said record was to the effect that the State Board of Equalization being in session on the 17th day of August, 1888, all members being present, and having in consideration the question of *the franchise derived from the State of California*, the roadway, roadbed, and rolling stock of the Central Pacific Railroad Company within the State, for the year 1888, assessed the FRANCHISE DERIVED FROM THE STATE OF CALI-

FORNIA, the roadway, roadbed, and rolling stock of said company, within said State, at the total sum of $15,000,000.

"The witness then produced and identified a volume as containing the minutes of the State Board of Equalization of 1887, from which it appeared that the only portion of said record relating to any assessment of the property of the defendant made for that year was as shown by the minutes of the proceedings of the 13th of August, 1887, as follows:

"'SATURDAY, *August 13, 1887*.

"'Board met. All the members present.

"'As the week had been spent in examining railroad values and various preliminary motions had been made, the understanding being that they should be recorded as having been made on this day. The following is a record of such motions:

"'CENTRAL PACIFIC.

"'Mr. Dunn moved that the Central Pacific be assessed at $28,000,000. No second.

"'Mr. Gaffey moved that it be assessed at $20,000,000. Seconded by Mr. Wilcoxen. The motion was carried by the following vote: *Ayes*—Dunn, Gaffey, Wilcoxen. *Noes*—Sloss, Morehouse.

"'CENTRAL PACIFIC.

"'Mr. Morehouse moved that it be reduced to $17,000,000—seconded by Mr. Sloss. Mr. Gaffey moved an amendment that it be reduced to $18,000,000—no second. Mr. Morehouse's motion lost by the following vote: *Ayes*, Morehouse, Sloss; *Noes*, Dunn, Gaffey, Wilcoxen. Mr. Gaffey moved that it be reduced to $18,000,000—seconded by Mr. Morehouse; carried by the following vote: *Ayes*, Gaffey, Morehouse, Sloss; *Noes*, Dunn, Wilcoxen.'" (Rec., pp. 163, 164.)

On the cross-examination of Mr. Coglan, the plaintiff offered, and the Court, against the objection of the de-

fendant, admitted, in evidence, the statements furnished by defendant to the State Board of Equalization for the years 1887 and 1888.

The defendant excepted to the ruling of the Court admitting these statements. (Rec., pp. 164, 165, 173.)

Mr. L. C. Morehouse, a member of the State Board of Equalization, testified that the assessment for 1887 in question, in this case, was intended to and did include defendant's Federal franchise, and that the value of that franchise was embraced in the total valuation. (Morehouse, Rec., pp. 180–192.)

The testimony of this witness showed that the first change in the system was made by the Board after the decision of this Court in *California* v. *Pacific Railroad Company*, in 1888. (Morehouse, Rec., p. 183.)

While this witness was on the stand the defendant formally offered to prove by him that at every session, during every year of the existence of the Board, from 1883, and prior to 1888, the Board, in making its assessment of the property of the Central Pacific Railroad Company, "included in its total estimate the value of the Federal franchise held by that company," and that "the valuation of the Federal franchise was blended into the general assessment of that company in such manner as to be indistinguishable from it and not capable of separation."

The Court sustained an objection of the plaintiff to such testimony as incompetent, irrelevant, and immaterial, and the defendant excepted to this ruling. (Rec., p. 184.)

Mr. E. W. Maslin, called as a witness for the defendant, was the Secretary of the State Board of Equalization from April, 1880, to March, 1891, and as such officer was present at the meetings of the Board, and kept the minutes and records of its proceedings. He remembered the assessment in question, the discussion in the Board concerning it, and the evidence taken before the Board; and he stated that he was fully acquainted with the history of railroad assessments since 1880, and that he knew how two of the members had arrived at their conclusions, and thought he had some knowledge of the other three; and that he was able to state what elements of value were considered by the Board in making their estimate of the total values of the properties of defendant for the year 1887.

Defendant thereupon asked the witness the following questions:

"Q. From the various sources of knowledge which you have enumerated, please state to the Court what elements were taken into consideration by the State Board of Equalization in making the assessment of this company for the year 1887.

"Q. Did you hear any conversation between the members of the State Board of Equalization during the meeting when the assessment of this company was made for the year 1887, with reference to the elements that they proposed to and did include in the assessment?

Q. At the time that the assessment of 1887 was made by the State Board of Equalization upon the property of the Central Pacific Railroad Company, what was said and done at the meeting of the State Board of Equalization on that day in your presence?

To each of these questions plaintiff interposed objections, which were sustained by the Court, and the de-

fendant excepted to the rulings. (Rec., pp. 193–194.)

The principal grounds of these objections were, that no one but a member of the Board could testify as to that matter, and that the record of the Board was the best and only evidence on that subject. (Rec., p. 93.)

These objections having been sustained, defendant formally made the following offer :

" In view of the ruling of the Court on this subject, we now offer to prove by this witness that, from the time of the organization of the State Board of Equalization in 1880, down to and including the year 1887, *that Board had every year considered the value of the Federal franchise—that is, the franchise derived from the United States by the acts of Congress of the Government of the United States, belonging to and owned by the Central Pacific Railroad Company, as an element of value in assessing the total value of the property of that railroad company; and that in 1888, in consequence of the decision of the Supreme Court of the United States upon the subject, the State Board of Equalization, for the first time, ceased to consider this Federal franchise as an element of value, and hence reduced their valuation by the sum of three million dollars on the Central Pacific Railroad Company's property.*"

This offer was disallowed by the Court, to which ruling the defendant excepted. (Maslin, Rec., p. 194.)

Mr. Maslin testified that the State Board of Equalization, in 1887, made their assessment of the value of the defendant's property, as shown by the record thereof in evidence, without deducting the *mortgage* upon the property. (Rec., p. 194.)

The Plaintiff's Rebutting Evidence.

The plaintiff produced as witnesses in *rebuttal* C. E. Wilcoxen, and John P. Dunn, members of the State Board of Equalization. (Rec., pp. 205–224.)

Mr. Wilcoxen would seem to have testified, on direct examination, though not intelligently or very confidently, that the Federal franchise was not assessed in 1887.

On cross-examination, however, he testified that the Federal franchises had been considered "*up to the time that the Supreme Court decided that we had no right to assess them, and then we never had anything to do with them afterwards.*" (Rec., p. 208.)

After the witness had so testified the counsel for plaintiff succeeded in having him say, in a qualified way, that this change was made after the *Circuit Court's* decision in 1886. (Rec., pp. 208–213.)

This witness testified throughout that his recollection on the whole subject was very imperfect. (Rec., pp. 208–210.)

The defendant's counsel desired to test the credibility or recollection of the witness, by asking him, on cross-examination, as to prior declarations made by him before a Committee of the Legislature, February 23, 1889, on the very point to which he had testified here; but the Court sustained an objection, on the part of the plaintiff, to such inquiry, and the defendant excepted to the ruling. (Rec., pp. 213, 214.)

The testimony of Mr. Dunn, the other witness for the plaintiff, when read as a whole, and carefully scrutinized, appears to be as conclusive in favor of the defendant as that of Mr. Morehouse. (Record, pp. 217–224.)

It appears from it that the first change in the system of the Board was made after the decision of this Court,

in 1888, in *California* v. *Pacific R. R. Co.* (Rec., p. 223.)

The utmost that can be claimed for Mr. Dunn's testimony is that it shows that the *words*, "Federal franchise," were not used by any member of the Board.

The witness testified expressly, however, that in arriving at the valuation assessed, the State Board of Equalization took into consideration the entire capital stock and bonds of the Company, covering as well its road in Nevada and Utah, and, also, the earnings of the road without, as well as within, the State of California. (Rec., pp. 221–224.)

The conclusion to be drawn from Mr. Dunn's testimony, would seem to be that this Federal franchise did form an element in the assessed valuation in 1887, for in no other view could any of the things, mentioned by him, have been pertinent or relevant to the question before the State Board of Equalization.

The Final Ruling of the Trial Court on the Evidence.

The general condition of the testimony, in the case, being as above stated, the record shows the following ruling upon it in the final decision of the Superior Court:

"In its written opinion, upon which the findings were based, the Court, after determining as a fact, from a preponderance of the evidence before it, that the Federal franchise of defendant was not assessed or included in the assessment of the property of defendant by the State Board of Equalization, for the year 1887, uses the following language:

"'But *if the parol evidence offered did not weigh in plaintiff's favor, and if, by a preponderance of such evidence,*

defendant could have shown that the State (Board of Equalization) intended to and did include a Federal franchise in the assessment, I think the Court would have to disregard it as incompetent. THE EFFECT OF SUCH PAROL EVIDENCE WOULD BE TO CONTRADICT THE RECORD, WHICH CAN NOT BE DONE."

"The best and *only* evidence of the acts and intention of *deliberative bodies* (*sic*) must be drawn from the *record* of its intentions. * * * From both standpoints of fact and *of law*, the findings must be that a Federal franchise was not included in these assessments." (Rec., pp. 224, 225.)

The Findings of Fact and Conclusions of Law.

The findings of the Superior Court, as to the allegations of the complaint, were that they were all true, except as to counsel fees, as to which it was found that a reasonable compensation for the services of Messrs. Langhorne & Miller was 7½ per cent., and for those of Mr. A. R. Cotton 2½ per cent. on the amount recovered. (Rec., pp. 131–136.)

As to the affirmative allegations of the answer, the Court found certain of them to be true and certain others not to be true. (*Ib.*, pp. 136–143.)

Amongst other things, the Court found:

"XXX. That on the 13th day of August, 1887, the State Board of Equalization of the State of California did, for the purposes of taxation for the fiscal year 1887, assess, *as a unit, and not separately*, THE FRANCHISE, roadway, roadbed, rails, and rolling stock of defendant's railroad, then being and situate within the State, at the sum and value mentioned in the amended complaint, and did then and there enter said assessment upon its minutes and in its record of assessments; that such assessment is the one upon which the several taxes mentioned in the complaint herein are based, and no other assessment than the one aforesaid was ever made by

said Board of Equalization or other assessor of said property of defendant for said fiscal year; that said Board did, at the time and in the manner alleged in the amended complaint, apportion said assessment and transmit such assessment and the apportionment to the county and city and county auditors, and the said assessment and the apportionment thereof were entered upon the assessment rolls of said counties and said cities and counties as alleged in said amended complaint, as hereinbefore found." (Rec., p. 140.)

"XXXI. That said Board of Equalization, in making said assessment, did assess the franchise, roadway, roadbed, rails, and rolling stock of defendant's railroad at their full cash value, without deducting therefrom the value of the mortgage or any part thereof, or the value of said bonds issued under said Acts of Congress, given and existing thereon, as aforesaid, to secure the indebtedness of said company to the holders of said bonds, and, in making said assessment said Board did not deem nor treat said mortgage or bonds as an interest in said property, but it assessed the whole value of said property as assessed to defendant in the same manner it would have done had there been no mortgage thereon." (Rec., p. 141.)

"XXXV. That in making its assessment and valuation therefor of defendant's franchise, said State Board of Equalization did not include, assess, or value any franchise or corporate power held or exercised by defendant under the Acts of Congress hereinbefore mentioned, or under any Act of Congress whatever. And said Board, in making said assessment and valuation therefor, upon defendant's franchise, roadbed, roadway, rails, and rolling stock for purposes of taxation for the fiscal year 1887, did not include in its assessment and valuation therefor, any Federal franchise, then possessed by defendant, nor any franchise or thing whatsoever, which said Board could not legally include in such assessment or valuation. The franchise, roadway, roadbed, rails, and rolling stock of defendant's railroad were valued and assessed by said Board, for purposes of taxation for the fiscal year 1887, at their actual value, and in proportion to their values respectively." (Rec., p. 142.)

Conclusions of Law.

The conclusions of law from the findings were as follows:

"The Court decides that plaintiff is entitled to recover judgment for the several principal sums of State and County taxes, found to be delinquent and unpaid, also to recover interest upon said principal sums of delinquent State and County taxes, from the 27th day of December, 1887, at the rate of seven per cent. per annum, up to the date of entry of judgment herein; also to recover five per cent. penalty upon the said principal sums; also to recover as counsel fees for legal services rendered it herein by Langhorne & Miller a sum equal to 7½ per cent. upon the principal sums of said delinquent State and County taxes, and for legal services rendered it herein by A. R. Cotton a sum equal to 2½ per cent. upon the principal sums of said delinquent State and County taxes.

"And the Court finds and decides that the total amount of said delinquent taxes, together with five per cent. penalty and interest thereon, amounts at the date hereof to the sum of $416,107.16, and that the total amount of said counsel fees earned by the said Langhorne & Miller, calculated and allowed as aforesaid, is the sum of $22,180.56, and that the total amount of said counsel fees earned by said A. R. Cotton, calculated and allowed as aforesaid, is the sum of $7,393.51." (Rec., p. 143.)

On February 3, 1893, judgment was entered upon the findings, in favor of the plaintiff, for the sums above mentioned. (*It.*, 143.)

On June 19, 1893, a statement on Motion for a New Trial was approved, allowed, and settled by the Court, and ordered filed as part of the record herein. (Rec., p. 260.) The statement includes the defendant's *Assignment and Specification of Errors.* (Rec., pp. 225–239.)

On June 23, 1893, the Court overruled the defendant's motion for a new trial. (*Ib.*, p. 260.)

On July 11, 1893, the defendant appealed to the Supreme Court of the State from the judgment, and from the order denying its motion for a new trial. (*Ib.*, p. 260.)

On January 6, 1895, the Supreme Court rendered the following judgment:

"The Court below is directed to modify the judgment by striking therefrom the amount allowed for interest prior to the entry of the judgment, and also the amount allowed for counsel fees to A. R. Cotton, and, as so modified, the judgment and order denying a new trial will stand affirmed." (Rec., p. 273.)

The opinion of the majority of the Court below was delivered by Mr. Justice Harrison. Justices Van Fleet and Fitzgerald, being disqualified, did not participate in the decision. Mr. Justice McFarland dissented from the opinion and judgment of the Court. (The People *v.* Central Pacific Railroad Company, 105 California, 576.)

The questions discussed by the Court below related to the validity of Sections 3668, 3669, and 3670 of the Political Code of the State of California, under Subdivision 10, Section 25, Article IV, of the Constitution of California, which prohibits the Legislature of the State from passing any local or special laws for the "*assessment or collection of taxes;*" the validity of the assessment by the State Board of Equalization, involved in the case, under the Constitution of the United States and the Pacific Railroad Acts, and the doctrines and

decision of this Court in the case of *California* v. *Pacific Railroad Companies;* the right of the plaintiff to recover interest on the amount of the alleged taxes ; and the legality of the allowance of fees to A. R. Cotton, in addition to the allowance made by the trial Court to Langhorne & Miller, employed by the State Controller to collect the alleged taxes sued for in this cause.

The Court below, in the majority opinion, sustained the contentions of the State upon the questions referred to, with the exception of the questions in respect to interest on the amount of the taxes and the fees of A. R. Cotton, which were ruled in favor of the defendant.

Mr. Justice McFarland said :

"In my opinion, the assessment in question is void under the decisions of the Supreme Court of the United States in the cases of *California v. Central Pacific Railroad Company and Southern Pacific Railroad Company* (127 U. S., 1), because it includes a Federal franchise, and thus attempts to tax 'one of the means or instrumentalities employed by the United States Government for carrying into effect its sovereign powers. That this can not be done by a State has been the established law ever since the decision of the Supreme Court in *McCulloch v. Maryland*, in 1819. The principle was fully recognized and declared by this Court in San Benito Co. *v.* S. P. R. R. Co., 77 Cal., 518, and San Francisco *v.* Western Union Telegraph Co., 96 Cal., 140.

"The only difference between the cases in *127 U. S.* and the case at bar is that in the former the trial Court found that the State Board of Equalization included in the assessment the value of 'all franchises and corporate powers held and exercised by the defendant,' while in the case at bar the Court below found that the said Board in making the assessment for the year 1887, 'did not include in its said assessment any Federal franchise.' But the assessment in both instances was

exactly the same, namely, '*the franchise*' of the railroad. In the former cases it does not appear that the trial Court received any evidence on the question as to what '*the franchise*' included; and it is probable that the finding was based upon the language of the assessment alone. In the case at bar the Court did receive evidence as to what the members of the Board intended by the words '*the franchise;*' and it appears in the record that the Court, after having concluded that 'from a preponderance of evidence before it the Federal franchise of defendant was not assessed or included in the assessment,' proceeded to say that 'if by a preponderance of such evidence defendants could have shown that the State intended to and did include the Federal franchise in the assessment, I think the Court would have to disregard it as incompetent. The effect of such parol evidence would be to contradict the record, which can not be done.' Now, if it was competent to introduce testimony to show the intent of the members of the Board when they made the assessment, then the Court clearly erred in ruling out certain evidence offered on that point by appellant. * * *

"On the other hand, if the record of the Board should alone be considered, then it simply appears that "*the franchise*" was assessed; and I can not possibly see how that phrase can be construed to mean anything else than the whole franchise of the railroad—all the franchise belonging to it. It means just what the lower Court has found it to mean, as above quoted, in the cases in *127 U. S.* The words '*the franchise*' clearly, in my judgment, include the right of appellant to do business—and the whole of that right. The right is a unit and inseparable. The Court below found that the Board 'did assess as a unit, and not separately, the franchise, roadway,' etc. And I can not conceive how a Court can, first, separate it, or, second, if it could, how it could determine which part to throw away. Moreover, the main foundation of the doctrine of *McCulloch* v. *Maryland* is that the power to tax includes the power to destroy; and thus a State might, under the guise of taxation, destroy or materially cripple an instrumentality of the Federal Government. And is it not manifest that in the case at bar that principle protects the

instrumentality here involved from injury or destruction under the pretense that only that part of the unity which comes from the State is taxed? Are not the effects and consequences the same?

"In my opinion, therefore, without discussing the other questions involved, the judgment should be reversed."

The Assignment of Errors, in this record, contains numerous specifications of error. (Rec., pp. 276–283.)

The specifications in paragraphs I, II, III and XII of the Assignment of Errors, in the record, raise questions respecting the validity of sections 4 and 10 of Article XIII of the Constitution of the State of California, and certain provisions of the Political Code of that State for the assessment, apportionment, and collection of State and County taxes upon property of railroads operated in more than one county, under Section 1 of the 14th Amendment of the Constitution of the United States.

The counsel for the plaintiff in error here state that they have concluded not to argue the specifications of error in paragraphs I, II, III, and XII, of the Assignment of Errors in the record, and they are omitted from the Assignment of Errors in this Brief.

The argument for the plaintiff in error, in this case, No. 559, and for the plaintiff in error in No. 560, will be directed and confined to the specifications in the Assignment of Errors in this Brief, and the Brief, on behalf of the plaintiff in error, in No. 560.

The argument, submitted to the Court, will consider :

I. The provisions of the Constitution and Political Code of California under which the State and County taxes in question on "the franchise" and railroad property of the plaintiff in error, were assessed, and are sought to be collected in this action. (Pp. 46-64.)

II. The legislation of Congress by which "the franchise" of the railroad of the plaintiff in error, was made a means and instrumentality employed by the National Government. (Pp. 64-84.)

III. The questions presented by the Assignment of Errors in this Brief, and the Brief for the plaintiff in error in No. 560. (Pp. 84-155.)

Assignment of Errors.

I. The Court below should have reversed and set aside absolutely the judgment of the Superior Court for the City and County of San Francisco, in this action, and erred in not so reversing and setting aside the said judgment, on the ground that upon the findings of facts in the record, the value of "*the franchise*" of the Central Pacific Railroad, derived from the United States, called the "Federal franchise," was included in the assessment of "*the franchise, roadway, roadbed, rails, and rolling stock*" of that Railroad, made by the State Board of Equalization, for the year 1887, and *inseparable therefrom*, and that the whole of the said assessment was, therefore, illegal and void under the Constitution and laws of the United States.

II. The Court below erred in affirming the judgment of the Superior Court, and in not reversing the said judgment, because it appears by the findings of fact, in the record, that the State Board of Equalization did assess for the year 1887, "*the franchise*" of the Central Pacific Railroad, whereas it also appears from the said findings that the said franchise is in whole or in part held under and derived from the Government of the United States, and can not, therefore, be the subject of taxation by any State, county, or municipal government, under the Constitution and laws of the United States.

III. The Court below erred in affirming the judgment of the Superior Court, and in not reversing the said judgment, because it appears from the findings of fact, in

the record, that the plaintiff in error was at the time of the making of the said assessment the owner and holder of certain franchises of great value derived from and held under and by virtue of certain Acts of Congress of the United States, and it appears from the evidence allowed to be introduced by the Superior Court, that in estimating the value of the franchise, roadway, roadbed, rails and rolling stock of the Central Pacific Railroad in the State of California, and in making the assessment thereof under which the taxes were levied for which this action was brought, the said State Board of Equalization included as an element of value and assessed the value of the said Federal franchises, but in making the said assessment blended the same with the other properties of the plaintiff in error assessed by it in such a manner that they can not be segregated therefrom, and, therefore, the said assessment and the whole thereof, and all taxes levied thereunder, and for which this action was brought, are null, void, and of no effect, and no action can be maintained, or judgment rendered therefor, under the Constitution and laws of the United States.

IV. The Court below erred in affirming the judgment of the Superior Court, and in not reversing that judgment, because the Superior Court found, in its *30th Finding of Fact*, in the record, that the State Board of Equalization, on August 13, 1887, "*did, for the purpose of taxation for the fiscal year 1887, assess as a unit, and not separately, the franchise*," etc., of the Central Pacific Railroad, then being and situate within the State

of California; but the Superior Court did *not* expressly find, in its *35th Finding of Fact*, or in any other finding of fact, in the record, that "*the franchise*" of the said railroad, assessed as aforesaid by the said State Board of Equalization, for the fiscal year 1887, was, in fact, the franchise of the said Railroad, "*derived from the State of California.*"

The conclusion of law of the Superior Court, and the judgment of that Court against the defendant in error, and in favor of the plaintiff in error, based upon the said findings of fact, were erroneous, and the Court below, therefore, should have reversed and set aside the said judgment, and erred in affirming the said judgment, and in not reversing and setting aside the same.

V. The Court below erred in deciding in this case that the State of California has the power and right to tax a part of "*the franchise*" of the Central Pacific Railroad, upon a claim that a part of such franchise was derived from that State, and that the same can be lawfully assessed by the State Board of Equalization for taxation by the State of California, under the Constitution and laws of the United States.

VI. The Court below should have reversed, and erred in not reversing, the judgment of the Superior Court, upon the ground that the property of the Central Pacific Railroad Company, including the franchise and every part of the franchise of the said railroad, was and is subject to the lien of the mortgage of the United States to secure the indebtedness of that Company to it, and the United States has an interest and ownership therein to

the extent of its said lien, and that, therefore, the franchise of the said railroad can not be taxed, and no part thereof can be taxed, or assessed by the State Board of Equalization for taxation, by the State of California, under the Constitution and laws of the United States.

VII. The Court below should have reversed, and erred in not reversing, the judgment of the Superior Court, upon the ground that the assessment of "*the franchise*," &c., of the Central Pacific Railroad, for the year 1887, as made by the State Board of Equalization, did not show expressly *on its face* that "*the franchise*" assessed for taxation by that Board, was the franchise of the Railroad *derived from the State of California*, and that the "Federal franchise" was not assessed, or included in the said assessment, by the said Board. The Court below should have adjudged, and erred in not adjudging, that the said assessment, therefore, was to be deemed *coram non judice*, and void, under the Constitution and laws of the United States.

VIII. The Court below should have reversed, and erred in not reversing, the judgment of the Superior Court, on the ground that the Superior Court erred in admitting in evidence the portion of the *Duplicate Record of Assessment of Railways by the State Board of Equalization for the year 1887*, relating to the assessment of the property of the plaintiff in error for the said year.

IX. The Court below should have reversed, and erred in not reversing, the judgment of the Superior Court, on the ground that the Superior Court erred in admit-

ting in evidence that portion of the *Duplicate Record of Apportionment of Railway Assessments for the year 1887*, having reference to the apportionment of the assessment of the property of the plaintiff in error for the year 1887.

X. The Court below should have reversed, and erred in not reversing, the judgment of the Superior Court, on the ground that the Superior Court erred in denying the motion of the plaintiff in error for a non-suit.

XI. The Court below should have reversed, and erred in not reversing, the judgment of the Superior Court, on the ground that the Superior Court, in deciding the case, and in making its Finding of Fact, No. 35, erroneously disregarded the evidence for the defendant, showing, or tending to show, that the State Board of Equalization did, in fact include, in its assessment of "the franchise," &c., of the Central Pacific Railroad, for the year 1887, the value of the franchise derived from the United States, called the "Federal franchise," upon the theory that such evidence was incompetent as having the effect of contradicting the "record," which, the Court said, "can not be done," and that such record was conclusive evidence "that the Federal franchise was not included in that assessment."

XII. The Court below erred in affirming the judgment of the Superior Court, and in not reversing the said judgment, because, while by finding of fact, *No. 35*, it is found that in making its assessment of the property of the plaintiff in error, the Central Pacific Railroad Company, for the year 1887, the State Board of Equal-

ization did not include, assess, or value any franchise or corporate power held or exercised by the plaintiff in error under any Act or Acts of Congress, yet upon a comparison of said finding of fact with the opinion of the Court upon which the same was based, as set forth in the "statement on motion for a new trial," it is manifestly impossible to determine therefrom whether said finding of fact was made upon consideration of the evidence tending to establish that such Federal franchise of the plaintiff in error was assessed or included in the assessment of the State Board of Equalization of the property of the plaintiff in error for the year 1887, and upon the preponderance of evidence upon that point in favor of the defendant in error, or whether said finding was made upon the presumption of fact of the regularity of the proceedings of the State Board of Equalization, and that the same was unassailed by reason of the incompetency of all evidence, on the part of the plaintiff in error, tending to rebut such presumption, and the consequent exclusion of such evidence from consideration by the Court.

XIII. The Court below erred in affirming the judgment of the Superior Court, and in not reversing the said judgment, as the Superior Court, on the trial of the case, erred in sustaining the objection of the plaintiff, defendant in error here, to the following offer of evidence on the part of the defendant, plaintiff in error here, to be given by the witness, L. C. Morehouse, namely :

"We offer to prove by this witness that at every session during every year of the existence of the State

Board of Equalization, from the year 1883 and prior to 1888, the State Board of Equalization, in making its assessment of the valuation of the property of the Central Pacific Railroad Company, included in its total estimate the value the Federal franchise held by that Company by virtue of the Acts of Congress of the United States, which have been introduced in evidence, and that the valuation of the Federal franchise was blended into the general assessment of that Company in such a manner as to be indistinguishable from it, and not capable of separation."

XIV. The Court below erred in affirming the judgment of the Superior Court, and in not reversing the said judgment, as the Superior Court erred in sustaining the objection of the plaintiff, defendant in error here, to the following question propounded by the defendant, plaintiff in error here, to its witness, E. W. Maslin, namely:

"From the various sources of knowledge which you have enumerated, please state to the Court what elements were taken into consideration by the State Board of Equalization in making the assessment of this Company for the year 1887."

XV. The Court below erred in affirming the judgment of the Superior Court, and in not reversing the said judgment, as the Superior Court erred in sustaining the objection of the plaintiff, defendant in error here, to the following question propounded by the defendant, plaintiff in error here, to its witness, E. W. Maslin, namely:

"Did you hear any conversation between the members of the State Board of Equalization during the meeting when the assessment of this Company was

made for the year 1887, with reference to the elements that they proposed to and did include in the assessment?"

XVI. The Court below erred in affirming the judgment of the Superior Court, as the Superior Court erred in sustaining the objection of the plaintiff, defendant in error here, to the following question propounded by the defendant, plaintiff in error here, to its witness, E. W. Maslin, namely:

"At the time that the assessment of 1887 was made by the State Board of Equalization upon the property of the Central Pacific Railroad Company, what was said and done at the meeting of the State Board of Equalization on that day in your presence?"

XVII. The Court below erred in affirming the judgment of the Superior Court, and in not reversing the said judgment, as the Superior Court erred in sustaining the objection of the plaintiff, defendant in error here, to the offer of evidence, on the part of the defendant, plaintiff in error here, to be given by the witness, E. W. Maslin, and in disallowing the said offer, which was as follows:

"We now offer to prove by this witness that from the time of the organization of the State Board of Equalization in 1880, down to and including the year 1887, that Board had every year considered the value of the Federal franchise—that is, the franchise derived from the United States by the Acts of Congress of the Government of the United States, belonging to and owned by the Central Pacific Railroad Company, as an element of value in assessing the total value of the property of that Railroad Company; and that in 1888, in consequence of the decision of the Supreme Court of the United States upon the subject, the State Board of Equalization, for

the first time, ceased to consider this Federal franchise as an element of value, and hence reduced their valuation by the sum of $3,000,000 on the Central Pacific Railroad Company's property."

XVIII. The Court below erred in affirming the judgment of the Superior Court, and in not reversing the said judgment, as the Superior Court erred in refusing to permit the witness for the defendant in error, C. E. Wilcoxen, to be interrogated, by the plaintiff in error, on cross-examination, in regard to the evidence given by him before the Judiciary Committee of the Assembly of the State of California, on February 23, 1889, in answer to questions of Mr. Lezynsky and Mr. Dibble.

XIX. The Court below erred in affirming the judgment of the Superior Court, and in not reversing the said judgment, as the Superior Court erred in admitting in evidence, on behalf of the plaintiff, defendant in error here, the paper marked, "*Plaintiff's Exhibit 4*," for the purpose stated at the trial.

XX. The Court below erred in affirming the judgment of the Superior Court, and in not reversing the said judgment, as the Superior Court erred in admitting in evidence on behalf of the plaintiff, defendant in error here, the paper marked, "*Plaintiff's Exhibit 6*," for the purpose stated at the trial.

ARGUMENT FOR PLAINTIFF IN ERROR.

I.

The Provisions of the Constitution and Political Code of California relative to the Assessment and Collection of Taxes on Railroads operated in more than one County.

FIRST.

By the Constitution of California, the jurisdiction and power of the State Board of Equalization in respect to the assessment of railroad property for the purposes of taxation, in that State, are limited and confined specifically to the assessment of "the franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county."

I. The Constitution of California, adopted in 1879, prescribes, as has been seen, two modes of assessing property subject to taxation, in that State, which are defined in Section 10 of Article XIII of that instrument, as follows :

"All property, except as hereinafter in this section provided, shall be *assessed* in the county, city, city and county, town, township or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this State shall be *assessed* by the State Board of Equalization at their actual value, and the same shall be *apportioned* to the counties, cities and counties, cities, towns, townships, and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities and counties, cities, towns, townships, and districts."

Thus all the taxable property, in the State, *except* "the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county," must be assessed in the county, city, city and county, town, township, or district in which it is located, in the manner prescribed by law, and "the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county," must be assessed by a special board, which is termed the State Board of Equalization.

That Board is constituted by the preceding section, Section 9, of Article XIII, of the Constitution, which provides that it shall be the duty of the Board "to equalize the valuation of the taxable property in the several counties in the State for the purposes of taxation."

The section further provides:

"The Boards of Supervisors of the several counties of the State shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation: *Provided*, such State and County Boards of Equalization are hereby authorized and empowered, under such rules of notice as the County Boards may prescribe, as to the county assessments, and under such rules of notice as the State Board may prescribe, as to the action of the State Board, to increase or lower the entire assessment roll, or any assessment roll contained therein, so as to equalize the assessment of the property contained in said said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll."

It is manifest upon the face of the Constitution of California that the jurisdiction of the State Board of

Equalization, as assessors of railroad property, is distinctly and specifically limited and restricted to the franchise, roadway, roadbed, rails, and rolling stock of railroads operated in more than one county in that State.

The Supreme Court of California, in *San Francisco and Northern Pacific Railroad Company* v. *The State Board of Equalization* (60 Cal., 12), adjudged that the portion of Section 10, of Article XIII, of the Constitution, relating to the assessment of railroad property by the State Board of Equalization, is self-executing, and that the Legislature can not add to or detract from the powers conferred upon the State Board of Equalization in respect to the assessment, for the purposes of taxation, of the particular property mentioned in the Constitution.

The same principle was affirmed by that Court in the earlier case of the *People* v. *The Supervisors of Sacramento County* (59 Cal., 321) and in the subsequent case of *San Francisco* v. *Central Pacific Railroad Company* (63 Cal., 467, 469).

II. The Constitution of California provides for taxes on property, on incomes, and on polls. The taxation on property is to be in proportion to its value. A specific tax is not imposed on any article or kind of property.

Section 1 of Article XIII declares that all property, in the State, not exempt under the laws of the United States, shall, with some exceptions, be taxed according to its value, to be ascertained as prescribed by law, and that the word "property," shall "include moneys,

credits, bonds, stock, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership."

Section 4 of the same Article declares that "a mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby," and that, "*except as to railroad and other quasi-public corporations*, in case of debts so secured, the value of the property affected by such mortgage, etc., less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situate."

The section, also, provides that "the taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment a full discharge thereof."

III. It will be observed that, although in several of the sections of Article XIII of the Constitution of California, reference is made to the "levy" of taxes, and to the "taxes so levied," and that one section says that "income taxes may be assessed to and collected from,"

&c., nowhere in the article is any provision made as to when, or by whom, or in what manner, any property tax shall be levied, or collected.

Section 13 of that Article of the Constitution declares: "The Legislature shall pass all laws necessary to carry out the provisions of this Article."

Under that provision the Legislature is competent to pass the acts necessary to carry into effect the provisions of Article XIII, within the limitations and restrictions expressly imposed upon that body by Section 25 of Article IV, and in other parts, of the Constitution.

Section 25 of Article IV of the Constitution of California declares:

"The Legislature shall not pass local or *special laws* in any of the following enumerated cases, that is to say: * * * *Third.* Regulating the practice of Courts of Justice. * * * *Tenth.* For the assessment or collection of taxes. * * * *Thirteenth.* Extending the time for the collection of taxes. * * * *Twentieth.* Exempting property from taxation. * * * *Twenty-fourth.* Authorizing the creation, extension, or impairing of liens."

The Constitution of California ordains further:

"No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature, nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms may not be granted to all citizens." (Section 21, Article I.)

"Corporations may be formed under general laws, but shall not be created by special act." (Section 1, Article XII.)

"The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise." (Section 22, Article I.)

SECOND.

The express and mandatory provisions of the State Constitution, limiting and restricting the jurisdiction of the State Board of Equalization in respect to the assessment of railroad property, have not deterred the Legislature from attempting to enlarge the powers, as well as modify the duties, of that Board, as defined by the Constitution, nor have they prevented the Board from assuming authority not conferred upon it by that instrument.

I. The legislative scheme for the assessment of "the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county," in force when the present assessment against the plaintiff in error was made, is contained, in the main, in sections *3664*, *3665*, *3666*, and *3667* of the Political Code of California, as amended and added to by the Act of March 9, 1883. (Statutes of 1883, p. 65.)

The Political Code of California was framed by the Act of March 12, 1871, entitled "*An Act to establish a Political Code.*"

The first legislation upon the present subject, after the adoption of the Constitution of 1879, was by an Act of March 22, 1880. (Stats. of 1880, p. 34.)

Section *3664* was by that Act added to the Political Code. By that section, as amended by the Act of 1883, the company is obliged to make a statement as to certain facts, and any other facts the Board of Equalization may require.

The statutory statement is not and never was notice and hearing with reference to the assessment of the property.

II. By the Constitution of the State, as has been seen, the State Board of Equalization has jurisdiction and power in respect to railroads operated in more than one county, to assess for taxation *only five things*, the franchise, roadway, roadbed, rails, and rolling stock; the county boards being required to assess all the rest of the property.

By Section *3665* of the Political Code, as amended by the Act of 1883, the Legislature assumed to *enlarge* the terms of the Constitution, by authorizing and requiring the State Board of Equalization to include, in its assessment, "the entire right of way, *bridges, culverts, wharves and moles upon which the track is laid, and all steamers which are engaged in transporting passengers, freights, and passenger and freight cars, across waters which divide the road.*"

The Supreme Court of California, in the case of *San Francisco* v. *Central Pacific Railroad Company* (63 Cal., 467, 469), held that, so far as steamers and ferry boats were concerned, Section *3665* was unconstitutional, and that such property was assessable by the county boards under the Constitution.

The same point was adjudged by this Court in *California* v. *Pacific Railroad Companies*, (127 U. S., 31), in which Mr. Justice Bradley, after quoting § 3665, said: "Here, it will be perceived that the Legislature undertakes to define what things are and what are not, comprised within the five categories of railroad property assessable by the State Board. * * * *This is clearly an enlargement of the terms of the Constitution.* Steam-

ers, at least, are not, and have been held by the Supreme Court of California not to be, embraced in the five categories."

The Court observed that section 10, Article XIII, of the State Constitution, "shows *explicitly* that, in regard to a railroad, the State Board has power to assess only five things, the franchise, roadway, roadbed, rails, and rolling stock; the county boards are authorized to assess all the rest of the property."

Notwithstanding the explicit terms of the Constitution, and even of section *3665* of the Political Code, the adjudicated cases show that the State Board has undertaken from time to time to include in its assessments the value of all fences erected on the line between the roadway and the lands of coterminous proprietors, and such action has been twice held by this Court to be in violation of the Constitution.

The question was decided against the Board in *Santa Clara County* v. *Southern Pacific Railroad*, in which Mr. Justice Harlan delivered the opinion of the Court (118 U. S., 394, 411, 414), and afterward in *California* v. *Pacific Railroad Companies*. (127 U. S., 35.)

But the most serious action of the State Board of Equalization to the injury of the Pacific Railroad Companies, before the decision of this Court in *California* v. *Pacific Railroad Companies*, was the inclusion of the Federal franchises in their assessments of the properties of those companies, in positive violation of the fundamental principles of the Constitution of the United States, and equally illegal whether their action was au-

thorized or was not authorized by the Constitution and legislation of the State.

It is clear from this record that it was not until the assessment for the fiscal year 1888, after this Court had unanimously decided that no Federal franchise could be legally included in these assessments, that the Board confined itself to an assessment of "the franchise derived from the State of California," the only franchise in respect to which they could possibly have any jurisdiction.

As said by Mr. Justice McFarland, in this case, the present assessment for 1887 and the assessment under review, in the case of *California* v. *Pacific Railroad Companies* (127 U. S.), were "exactly the same, namely, 'the franchise' of the railroad." (Record, p. 272.)

The assessments were for the same *amount*, eighteen millions of dollars.

In 1888, after this Court pronounced its judgment, the assessment against the Central Pacific Company was reduced to *$15,000,000*, by the omission of the things which the Board had theretofore illegally included in its assessments, and confining the assessment, so far as franchises were concerned, to a valuation of "*the franchise derived from the State of California*," under the advice of the Attorney General. (See Record, pp. 163, 164.)

III. The Constitution of the State, by Section 10 of Article XIII, requires the State Board of Equalization to apportion its assessment of the value of the "franchise, roadway, roadbed, rails, and rolling stock" of a railroad operated in more than one county, "to the counties,

cities and counties, *cities, towns, townships, and districts,*" in which such railroad is located, "in proportion to the number of miles of railway laid in such counties, cities and counties, *cities, towns, townships, and districts.*"

By section 3665 of the Political Code, as amended by the Act of 1883, no apportionment is required to be made by the State Board, except to the several counties, and the County Boards of Supervisors are authorized to apportion assessments to cities, towns, townships, school and road districts, or lesser taxing districts, through which the railway runs, in plain violation of the Constitution of California. (S. F. & N. P. R. R. Co. *v.* State Board of Equalization, 60 Cal., 12.)

It was expressly decided, in that case, that the Legislature could not "detract from the powers of the Board, nor relieve them of duties imposed by the Constitution."

IV. Section *3666*, as added to the Political Code by the Act of 1883, requires the State Board of Equalization to prepare each year a book, to be called "*Record of Assessment of Railways*," in which there must be entered each assessment made by the Board.

The record of the apportionment of the assessments by the Board to the county, and cities and counties, is required to be made in a separate book, called "*Record of Apportionments of Railway Assessments*," in which there must be entered the names of the railways assessed by the Board, the names of the corporation, to which, or the name of the person or association to

whom, each railway was assessed, the whole number of miles of the railway in the State, the number of miles thereof in each county, or city or county, the total assessment of "the franchise, roadway, roadbed, rails, and rolling stock" for the purposes of State taxation, and the amount of the *apportionment* of such total assessment to *each county*, and *city and county*, for county, and city and county, taxation, omitting *entirely the apportionment to cities, towns, townships, and districts, required by the Constitution of the State.*

The section contains no provision that there shall be entered in the book of apportionment of railway assessments, the number of miles of railway in each town, city, township, and district in each county, or that any portion of such assessment has been apportioned to the cities, towns, townships, and districts, in proportion to the number of miles of railway laid therein.

Section *3666* also, provides that, before the third Monday of October of each year, the Clerk of the State Board of Equalization must prepare and transmit to the Controller of State duplicates of the "*Record of Assessment of Railways*," and "*Record of Apportionment of Railway Assessments*," each certified by the Chairman and Clerk of the Board, and to be known, respectively, as "*Duplicate Record of Assessment of Railways*," and "*Duplicate Record of Apportionment of Railway Assessments.*"

In the last-named duplicate two columns must be added, in one of which the Controller must enter the State taxes due the State upon the whole assessment by each corporation, person, or association, and in the

other, the county, or city and county taxes, due upon the assessment apportioned to each county, or city and county, by each corporation, person, or association.

The two duplicates constitute the warrant for the Controller to collect the State and county, and city and county taxes, levied upon such property assessed by the Board, and the amount of the apportionment of the assessment to each county, and city and county, respectively.

V. Section *3667* was also added to the Political Code by the Act of 1883, and it provides that "when the Board of Supervisors of each county and city and county to which the Board has apportioned the assessment shall have fixed the rate of county or city and county taxation, the Clerk of the Board of Supervisors must transmit to the Controller a statement of the rate of taxation."

It also makes it the duty of the Controller, on or before the fourth Monday in October, to compute and enter in separate columns, in the "Duplicate Record of Apportionment of Railway Assessments," the respective sums to be paid by the corporation, person, or association liable therefor, the State tax upon the total amount of the assessment, and the *county*, or *county and city*, tax upon the apportionment of the assessment to each *county*, and *city and county*, of the property assessed to such corporation, person, or association named in said duplicate record.

VI. Such, in brief, was the general legislative scheme relating to the assessment, and the apportionment of

assessments, of this species of property, in operation at the time the assessment involved in the present case was made by the State Board of Equalization.

The scheme is plainly a departure from the mandatory provisions of the State Constitution.

It is not surprising, therefore, that the officers appointed to execute this legislative scheme of assessment, against the particular companies affected by it, as operating roads in two or more counties, should have arrogated to themselves powers which never belonged to them, and could not be conferred on them, under the Constitution of California or the Constitution of the United States.

THIRD.

The Legislative scheme for the collection of taxes on railroads operated in more than one county has been deemed by the Supreme Court of California to be in conflict with the Constitution of that State.

I. Sections *3668, 3669, and 3670* of the Political Code, which embody the provisions for the *collection* of taxes on railroads operated in two or more counties, were added to that Code by the Act of March 9, 1883, entitled an Act "to amend Sections 3664, 3665, and 3734 of, and to add six new sections, to be numbered 3666, 3667, 3668, 3669, 3670, and 3671, to an Act entitled 'An Act to establish a Political Code, approved March 12, 1871.'" (Statutes of 1883, p. 65.)

By § *3668*, the Controller, within ten days after the fourth Monday in October, must publish a notice, that he has received from the State Board of Equalization the

duplicate records, above mentioned, and that the taxes will be delinquent on the last Monday in December next, and that unless paid to the *State Treasurer at the Capitol prior thereto*, five per cent. will be added to the amount thereof.

The section also provides that when any *taxes are paid to the State Treasurer by order of the Controller*, the Controller is to notify the Auditor and Treasurer of each county, and city and county, that such taxes have been paid, and of the amount to which the county, or city and county, is entitled.

By § *3669*, "each corporation assessed by the State Board of Equalization must pay to the *State Treasurer*, upon the order of the Controller, the State and county, and city and county, taxes each year levied upon the property so assessed to it by said Board."

The section also provides that any corporation dissatisfied with the assessment made by the Board, upon the payment of the taxes, and the five per cent. added, may sue the State Treasurer.

By § *3670*, it is provided:

"After the first Monday of February of each year, the Controller must begin an action in the proper court, in the name of the people of California, to collect the delinquent taxes upon the property assessed by the State Board of Equalization; such suit must be for the taxes due the State, and all the counties, and cities and counties, upon property assessed by the Board, and appearing delinquent upon the 'Duplicate Record of Apportionment of Railway Assessments.' *The demands for State and county, and city and county, taxes, may be united in one action.* In such action a complaint in the following form is *sufficient:* [Form of complaint.] On the filing of such complaint, the Clerk must issue the writ

of *attachment* prayed for; *no bond nor affidavit* previous to the issuing of the attachment is required. If in such action the plaintiff recovers judgment, there shall be *included in the judgment as counsel fees*, and in case of *judgment of taxes after suit brought, but before judgment, the defendant must pay as counsel fees, such sums as the Court may determine to be reasonable and just.* Payment of the taxes or the amount of the judgment in the case must be made to the State Treasurer. In such action the duplicate record of assessment of railways, and the duplicate record of apportionment of railway assessments, or a copy of them, certified by the Controller, showing unpaid taxes against any corporation, person or association for property assessed by the State Board of Equalization, is *prima facie* evidence of the assessment, the property assessed, the delinquency, the amount of the taxes *due and unpaid to the State and counties, or cities and counties, therein named,* and that the corporation, person or association is *indebted to the people of the State of California in the amount of taxes, State and county, and city and county, therein appearing unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with.*"

The broad question of the validity of this legislation under the Constitution of California, which prohibits *special* legislation, not only for the regulation of the practice of courts of justice, but also for the assessment or collection of taxes, and precludes the Legislature from conferring a benefit or imposing a duty or burden upon one or more corporations, not conferred or imposed upon all corporations formed under the same law, was presented to the Supreme Court of California in the case, before cited, of *The People* v. *Central Pacific R. R. Co.* (83 Cal., 393), which was a suit for State and county taxes upon the assessment by the State Board of Equalization against the Company for the year 1886.

The complaint was in the form prescribed by sec. *3670* of the Political Code, and the demurrer of the Company attacked the action upon the ground that the entire legislative scheme, so far as it relates to the collection of such taxes, is in conflict with the Constitution of the State.

The Court decided, as stated above, that this legislation for the *collection* of these railroad taxes, was not necessary for the purpose of carrying into effect any of the provisions of Article XIII of the Constitution of California, and was "special" legislation in contravention of subdivisions 3 and 10 of section 25 of Article IV of that Constitution. (83 Cal., 401, 405, 406.)

It was held by the Court that the Constitution "provides for a difference in the mode of *assessment* only, not in the mode of levy, or of *collection* of the tax on the property assessed." (*Ib.*, p. 406.)

The portions of the opinion of the Court, delivered by Mr. Justice Fox, devoted to an examination of the points of difference between the general law, and the special provisions of this railroad law of California, are too long to justify quotation in full, but they show, as stated in the opinion, a broad and marked discrimination against the owners of railroad property situated or operated in two or more counties of the State.

The Court said:

"Under the general law, the taxes upon all property, except that here under consideration, are collected by the tax collector of the county in which the property is situated; the State assumes the burden, the expense, and the risk of transporting its portion of the taxes so collected from the respective county seats to the State

Treasury. Under this special law, all the taxes upon this class of property must be paid at the office of the State Treasurer. This includes not only the State but the county taxes for the several counties, thus imposing upon the tax payer the burden, the expense, and the risk of transporting to the capital of the State moneys which, in the aggregate, may be estimated by *tons*, as all taxes in this State must be paid in *coin*."*

At the conclusion of its review of the subject, the Court said—

"That these provisions for the collection of taxes upon the property of railroad companies operating in two or more counties do impose burdens not imposed upon other railroad companies organized under the same general laws, seems to us too plain for argument." (*Ib.*, pp. 410, 414.)

It is well known that special legislation was the curse of the State of California prior to the adoption of the Constitution of 1879, which determined that the practice of courts of justice, and the collection of revenue throughout the State, at least, should be uniform, and governed by general laws.

II. It is difficult to understand from the opinion, in the present case, whether the learned Court below intended to overrule the case of the *People* v. *Central Pacific Railroad Co.*, in 83 California, or to limit its authority, by construction, to a determination that Section *3670* of the Political Code is unconstitutional under

* It was estimated that if the amount of the taxes, claimed, in the five actions, were paid in *gold coin* alone, its weight would exceed a ton and a half; were it paid in *silver* alone, its weight would amount to over twenty tons; were it paid, one half in gold and one-half in silver, its weight would amount to about eleven tons.

subdivision 3, Section 25, Article IV, of the Constitution, providing that the Legislature shall pass no special law "regulating the practice of courts of justice."

The learned Court states that one of the questions, in this case, was whether Sections 3668, 3669, and 3670 of the Political Code "contravene the provisions of Section 25, Article IV, of the Constitution, and particularly of subdivision 10 thereof, by which the Legislature is prohibited from passing a special law 'for the assessment or collection of taxes,'" but the very same question, as we understand, was formally presented, discussed, and decided against the State, in the preceding case in 83 California.

The learned Court further states: "There are matters in the opinion of Mr. Justice Fox, in *People* v. *C. P. R. R. Co.*, in support of the contention of the appellant, but after the Court had decided that the complaint was insufficient in any aspect in which it might be viewed, its further opinion of the effect of a complaint that would have sufficiently presented a cause of action must be regarded as *obiter dicta*."

But the decision in 83 California, as we understand, was, that by the Constitution of California, a suit against the defendant for taxes could only be maintained under the gederal law of the State for the collection of taxes, by which, as stated by the Court, an action for taxes can not be brought or maintained against a tax payer "until the property has been offered for sale by the tax collector, once at least, and even then it must be commenced in the county where the property is situate, and the money, when paid, whether before

or after judgment, must be paid to the county treasurer, and not to the State treasurer." (83 Cal., 411, 412.)

The Supreme Court, in that case, determined that inasmuch as no attempt was made to collect the taxes through the county tax collector, and no property was ever offered for sale to pay the taxes, and no notice was given, as required by the *general law* for the collection of taxes, there was no authority for the institution of the action, and no legal basis for a recovery.

II.

The Central Pacific Railroad Company and its Railroad.

FIRST.

The Central Pacific Railroad Company was endowed by the National Government with franchises, powers, and property as one of the agents selected and employed by it for the execution of its powers under the Constitution. Among these franchises was, and is, the fundamental and vital franchise to construct, operate, and enjoy the railroad of the Company, as established and maintained by it, in, through, and beyond the State of California, from the Pacific Coast to the junction with the Union Pacific Railroad, for the uses and purposes, and subject to the duties and conditions, declared and provided for by Congress.

I. This Court will, no doubt, take judicial notice of the legislation of Congress under which the railroad of the Central Pacific Railroad Company was constructed, and is operated, and the general facts in regard to the

history and constitution of the company to which that legislation has reference or relation.

These subjects, however, are embraced by the *Findings of Fact* in this case. (Record, pp. 136–142.)

The railroad extends from the Pacific Ocean across the State of California and the State of Nevada to Promontory, in the Territory of Utah. (Rec., pp. 136–137.)

By section 31 of Article IV of the old Constitution of California it was provided: "Corporations may be formed under *general laws*, but shall not be created by *special act*, except for municipal purposes."

On May 20, 1861, the Legislature passed an Act, providing for the incorporation of railroad companies, by the filing of "articles of association" in the office of the Secretary of State. (Stats., 1861, p. 607.)

On June 20, 1861, a corporation, called the Central Pacific Railroad Company of California, was formed under this Statute, for the purpose of constructing, owning, and operating a railroad and telegraph line from the City of Sacramento, through Sacramento, Sierra, Placer, and Nevada counties, to the eastern boundary of the State, a distance of about one hundred and fifty miles. (Sinking Fund Cases, 99 U. S., 727.)

"No power was given to build any road outside of the State, or in the State, except between the *termini* named."

Congress on July 1, 1862, passed the historical Act entitled, "*An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes.*" (12 Stats., 489.)

The Act created the Union Pacific Railroad Company, and authorized it "*to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances,*" from a designated point on the one hundredth meridian of longitude west from Greenwich, in the Territory of Nebraska, to the western boundary of Nevada Territory.

Section 2 granted to the Company the right of way through the public lands, and power to take from such lands material for the construction of the line proposed.

Section 3 granted to the Company, "for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores thereon," alternate sections of public lands, as mentioned.

Section 5 provided for issuing to the Company bonds of the United States, which should constitute a first lien on the railroad and telegraph line, with authority to the Secretary of the Treasury to take possession of the road for the use of the United States on the failure of the Company to redeem the bonds, in accordance with the Act.

By section 6, it was declared :

"That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, supplies and public stores upon said railroad for the Government, whenever required to do so by any department thereof, and that the Government shall at all times have thepreference in the use of the same for all the purposes aforesaid."

By section 9 it was provided that—

"The Central Pacific Railroad Company, of California, a corporation existing under the laws of the State of California, are hereby authorized to construct a railroad and telegraph line from the Pacific coast, at or near San Francisco, or the navigable waters of the Sacramento River, to the eastern boundary of California, *upon the same terms and conditions in all respects* as are contained in this Act for the construction of said railroad and telegraph line first mentioned, and to meet and connect with the first mentioned railroad and telegraph line on the eastern boundary of California. Each of said companies shall file their acceptance of the conditions of this Act in the Department of the Interior within six months after the passage of this Act."

And in the 10th section it was further provided:

"And the Central Pacific Railroad Company of California, after completing its road across said State, is authorized to continue the construction of said railroad and telegraph through the Territories of the United States to the Missouri River, including the branch roads specified in this Act, upon the routes hereinbefore and hereinafter indicated, *on the terms and conditions provided in this Act in relation to the said Union Pacific Railroad Company*, until said roads shall meet and connect, and the whole line of said railroad and branches and telegraph is completed."

By section 12, power was given to the President to establish a uniform width of track, so that the same cars can be run from the Missouri River to the Pacific Ocean.

By section 16, power was given to the Central Pacific to consolidate with the other companies named in the Act.

By section 17, it was provided that in case the said company or companies failed to comply with the terms and conditions of the Act, "Congress may pass an act

to insure the speedy completion of said road and branches, or put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the use of the United States," etc.; and further, that if said roads are not completed, "so as to form a continuous line from the Missouri River to the navigable waters of the Sacramento River, by July 1, 1876, the whole of all of said railroads before mentioned and to be constructed under the provisions of this Act, together with all their property of every kind and character, shall be forfeited to and be taken possession of by the United States."

The 18th section provided that when the net earnings of the entire road shall have reached a certain percentage upon its cost, "Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law."

"And the better to accomplish the object of this Act—namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes—Congress may, at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal, this Act."

Finally, the companies were required to make annual reports as to the matters mentioned, to the Secretary of the Treasury.

By the Act of March 3, 1863, Congress established the gauge of the Pacific Railroad and branches throughout their whole extent, from the Pacific coast to the Missouri River, at four feet eight and one-half inches.

This learned Court is familiar, also, with the provisions of the Amendatory Act of July 2, 1864, by which additional rights, franchises, privileges, immunities, and property were granted to the companies engaged in the great national work proposed by Congress in the Act of July 1, 1862, in order to secure the completion of that work, which, at that crisis in the war of the rebellion, was of imminent necessity. (Act, July 4, 1864, 13 Stats, 356; United States *v.* Union Pacific Railroad Co., 91 U. S., 80.)

By Section 16 of that Act, it was provided:

"That should the Central Pacific Railroad Company of California complete their line to the eastern line of the State of California before the line of the Union Pacific Railroad Company shall have been extended westward so as to meet the line of said first-named company, said first-named company may extend their line of road eastward one hundred and fifty miles, on the established route, so as to meet and connect with the line of the Union Pacific road, complying in all respects with the provisions and restrictions of this Act as to said Union Pacific road, and upon doing so, shall *enjoy all the rights, privileges, and benefits conferred by this Act on said Union Pacific Railroad Company.*"

By Section 23 of the Act of 1864, it was provided that "Congress may, at any time, alter, amend, or repeal this Act."

By the *Sinking Fund* Act of May 7, 1878, the whole amount of the compensation for services to the Government, rendered by the plaintiff in error, on the bond-aided portion of its railroad, is retained by the United States, and twenty-five per cent. of its net earnings must be paid into the national treasury. (20 Stats., 56.)

II. It is found that the Central Pacific Railroad Company of California accepted the provisions of the Acts of 1862 and 1864; that on or about October 21, 1864, that company assigned to the Western Pacific Railroad Company, a corporation created and then existing under the laws of California, all its rights under the said Acts of Congress, so far as they related to the construction of the said railroad and telegraph line between the cities of San José and Sacramento, in California; and that this assignment was ratified and confirmed by Congress, in the Act of March 3, 1865, to amend the constituting Acts of 1862 and 1864. (Record, p. 135; Finding XXVI.)

The Act of March 3, 1865, was as follows:

"That section 10 of said Act of July 2, 1864, be so modified and amended as to allow the Central Pacific Railroad Company, and the Western Pacific Railroad Company of California, the Union Pacific Railroad Company, the Union Pacific Railroad Company, eastern division, and all other companies provided for in the said Act of the second of July, eighteen hundred and sixty-four, *to issue their six per centum thirty years' bonds*, interest payable in any lawful money of the United States, *upon their separate roads.* And the said companies are hereby authorized to issue, respectively, their bonds to the extent of one hundred miles in advance of a continuous completed line of construction."

"SEC. 2. That the assignment made by the Central Pacific Railroad Company, of California, to the Western Pacific Railroad Company, of said State, of the right to construct all that portion of said railroad and telegraph from the city of San José to the city of Sacramento, is *hereby ratified and confirmed to the said Western Pacific Railroad Company, with all the privileges and benefits of the several Acts of Congress relating thereto, and subject to all the conditions thereof: Provided*, That the time within

which the said Western Pacific Railroad Company shall be required to construct the first twenty miles of their said road, shall be one year from the first day of July, eighteen hundred and sixty-five, and that the entire road shall be completed from San José to Sacramento, connecting at the latter point with the said Central Pacific Railroad, within four years thereafter." (13 Stats., 504.)

It is also found as follows:

"*XXVII.* That said line of railroad from said City of San José to Promontory in Utah Territory was completed and put in operation in 1869, and has been in operation from that time until the present, and still is in operation, and the whole of the railroads mentioned in the said Acts of Congress have long since been completed and are now operated as one continuous line from the Missouri River to the Pacific Ocean, and the corporations in charge thereof, including this defendant, have transported over said continuous line troops, munitions of war and postal matter, and charged the United States Government for such transportation."

"*XXVIII.* That in August, 1870, under and by virtue of the laws of the State of California providing for the amalgamation and consolidation of railroad corporations, said Central Pacific Railroad Company of California and the said Western Pacific Railroad Company, consolidated under the name of the Central Pacific Railroad Company, which is defendant herein, and which has since the consolidation aforesaid, and until the present time, owned and operated all of its said railroad in the State of California as a part of said continuous line of railroad from the Pacific Ocean at San José, California, to the Missouri River; that said consolidation of said Central Pacific Railroad Company of California and said Western Pacific Railroad Company was thereafter ratified and confirmed by an Act of Congress passed on the 7th of May, 1878, entitled '*An act to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862; and also to alter and amend the*

Act of Congress approved July 2, 1864, in amendment of said first-named act,' which said act is published in volume 20, United States Statutes at Large, at page 56, and which said act is hereby referred to by its title and by such reference made a part hereof."

The Superior Court also, found at length, certain facts in regard to the existing mortgage indebtedness of the Central Pacific Railroad Company. (Finding XXIX, Rec., pp. 139, 140.) It appears that under the Acts of Congress of July 1, 1862, and July 2, 1864, the United States loaned to the Central Pacific Railroad Company of California, prior to the adoption of the Constitution of 1879, bonds at the rate of $16,000 per mile of said railroad from Sacramento to the easterly line of California, and have a lien on the said railroad, its rolling stock, and franchises; that by the Act of Congress of July 2, 1864, the Company was authorized to issue its bonds in an amount equal to the said United States bonds, and to secure their payment by a mortgage upon its road, property, and franchises; that under that Act of Congress, bonds to the amount of more than $5,000 per mile of said railroad from Sacramento to the easterly line of California, were issued by the Company before January 1, 1875, secured by a mortgage executed by the Company upon its railroad property, and franchises; and that many of such bonds are owned by citizens of California, and many by citizens of other States of the Union.

III. The facts found by the Circuit Court of the United States for the Northern District of California, in the case of *California* v. *Pacific Railroad Companies*, in relation

to the construction and operation of the Central Pacific Railroad, in and outside of the State of California, under the authority of Congress, were in substance the same as the facts embraced by the findings, in the present record, upon that subject.

This Court conclusively adjudged, in the former case, upon the facts, as presented, that if the Central Pacific Railroad Company is not a Federal corporation, its most important franchises, including the FUNDAMENTAL FRANCHISE to construct a railroad from the Pacific Ocean across the State of California, and the Federal Territories, until it should meet the Union Pacific Railroad, as it did at Ogden, in the Territory of Utah, were conferred upon the Company by Congress, which had the undoubted power to make the grant of those franchises, and that, without the consent of Congress, no one of the franchises so granted by the United States, was or is the lawful subject of taxation by the State of California.

Mr. Justice Bradley, delivering the judgment of the Court, said :

"The first question then, is, whether the defendants in these cases held any franchises granted to them by the Government of the United States. Of this there can hardly be a doubt.

"If we turn to the Acts of Congress, referred to by the Circuit Court, we shall find that franchises of the most important character were conferred on this Company." [The Central Pacific.]

"Thus, without referring to the other franchises and privileges conferred upon this Company, *the fundamental franchise* was given by the Acts of 1862, and the subsequent acts, to *construct a railroad from the Pacific Ocean* ACROSS THE STATE OF CALIFORNIA, and the

Federal Territories, until it should meet the Union Pacific, which it did meet at Ogden, in the Territory of Utah. *This important grant,* though in part collateral to, was *independent of that* made to the Company by the State of California, *and has ever since been possessed and enjoyed.* The present Company has it by transfer from, and consolidation of, the original companies, by which its existence and capacities were constituted. Such consolidation was authorized by the 16th section of the Act of Congress of July 1, 1862, and the 16th section of the Act of July 2, 1864, taken in connection with the 2d section of the Act of March 3, 1865, referred to in the findings of the Court. The last-named Act ratified the transfer by the Central Pacific to the Western Pacific of a portion of its road extending from San José to Sacramento, and conferred upon the latter Company all the privileges and benefits of the several Acts of Congress relating thereto, and subject to all the conditions thereof.

"If, therefore, the Central Pacific Railroad Company is not a Federal corporation, its most important franchises, *including that of constructing a railroad from the Pacific Ocean to Ogden City, were conferred upon it by Congress.*" (127 U. S., 35, 38, 39.)

The learned Court considering the like question, in reference to the Southern Pacific Railroad Company, said:

"It only remains to consider whether the Southern Pacific Railroad Company, as well as the Central Pacific Railroad Company, was invested with any franchises derived from the Government of the United States. Of this we think there can be no question.

"An examination of the Acts referred to in these findings shows that Congress authorized the Southern Pacific Railroad Company to connect with the Atlantic and Pacific Railroad at such point near the boundary line of the State of California, as it should deem most suitable for a railroad line to San Francisco, and, to aid in the construction of such a railroad line, Congress declared that the Company should have similar grants of land, should be required to construct its road on like

regulations, as to time and manner, with the Atlantic and Pacific. Like powers were also given to the Southern Pacific Railroad Company to construct a line of railroad from Tehacapa Pass, by way of Los Angeles, to the Texas Pacific road at the Colorado River (Fort Yuma.) The Southern Pacific Company was not authorized by its original charter to extend its railroad to the Colorado River, as we already know by other cases brought before us, and as appears by the Act of the State legislature of April 4, 1870, which assumed to authorize the Company to change the line of its railroad so as to reach the eastern boundary line of the State; thus *duplicating* the power given to it by the Act of Congress [to construct a railroad from San Francisco to the Colorado River.] This State legislation was probably procured to remove all doubts with regard to the Company's power to construct such roads. It is apparent, however, *that the franchise to do so was fully conferred by Congress*, and that franchise was accepted, and the roads have been constructed in conformity thereto.

"It conclusively appears, therefore, that the Southern Pacific Railroad Company did receive from the United States, and still enjoys, important franchises connected with its railroads." (*Ibid.*, 42, 44, 45.)

The second question considered and determined by the Court, in the former Pacific Railroad cases, was as to the constitutional power of Congress to make the grant to the companies of these franchises exercisable in and without the State of California; and upon that question the Court said:

"It can not at the present day be doubted that Congress, under the power to regulate commerce among the several States, as well as to provide for postal accommodations and military exigencies, had authority to pass these laws. The power to construct, or to authorize individuals or corporations to construct, national highways and bridges from State to State, is essential to the complete control and regulation of interstate commerce. Without authority in Congress to establish

and maintain such highways and bridges it would be without authority to regulate one of the most important adjuncts of commerce. * * * Of course, the authority of Congress over the Territories of the United States, and its power to grant franchises exercisible therein, are, and ever have been, undoubted. But the wider power was very freely exercised, and much to the general satisfaction, in the creation of the vast system of railroads connecting the East with the Pacific, traversing States as well as Territories, and employing the agency of State as well as Federal corporations. See *Pacific Railroad Removal Cases*, 115 U. S., 1, 14, 18." (127 U. S., 39, 40.)

IV. It thus appears upon the facts as found below, under the adjudicated doctrines of this Court, that, at the time of the assessment by the State Board of Equalization, in question, the Central Pacific Railroad Company held and exercised among other franchises derived from the United States, the fundamental franchise to maintain, operate and enjoy its railroad, as constructed, within and without the State of California, and that this railroad, and this franchise, of the Company, were, in fact and law, means and instruments by which the United States carried out its powers to regulate commerce among the several States, and executed its other sovereign powers under the Constitution.

SECOND.

This Court, in the case of California v. Pacific Railroad Companies, conclusively adjudged, also, that the State of California has no power, without the consent of Congress, to tax the franchises derived by the Central Pacific Railroad Company from the Government of the United States, or any franchise conferred on it by that Government, or any part of any franchise granted to that Company by the United States.

I. The Court, in the former Pacific Railroad cases, said:

"Assuming, then, that the Central Pacific Railroad Company has received the important franchises referred to by grant of the United States, the question arises whether they are legitimate subjects of taxation by the State. They were granted to the Company for National purposes and to subserve National ends. It seems very clear that the State of California can neither *take them away, nor destroy nor abridge them, nor cripple them by onerous burdens. Can it tax them?* It may undoubtedly tax *outside visible property of the Company, situated within the State.* That is a different thing.

"But may it tax *franchises* which are the grant of the United States? In our judgment, it can not. What is a franchise? Generalized, and divested of the special form which it assumes under a monarchical government based on feudal traditions, a franchise is a right, privilege or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration, either by the government directly, or by public agents, acting under such conditions and regulations as the government may impose in the public interest, and for the public security. Such rights and powers must exist under every form of society. Under our system, their existence and disposal are under the control of the legislative department of the government,

and they can not be assumed or exercised without legislative authority. No private person can establish a public highway, or a public ferry, or railroad, or charge tolls for the use of the same, without authority from the legislature, direct or derived. These are franchises. No private person can take another's property, even for a public use, without such authority; which is the same as to say, that the right of eminent domain can only be exercised by virtue of a legislative grant. This is a franchise. No persons can make themselves a body corporate and politic without legislative authority. Corporate capacity is a franchise. The list might be continued indefinitely.

"In view of this description of the nature of a franchise, how can it be possible that a franchise granted by Congress can be subject to taxation by a State without the consent of Congress? Taxation is a *burden*, and may be laid so heavily as to destroy the thing taxed, or render it valueless. As Chief Justice Marshall said in *McCulloch* v. *Maryland*, 'the power to tax involves the power to destroy.' Recollecting the fundamental principle that the Constitution, laws, and treaties of the United States are the supreme law of the land, it seems to us almost absurd to contend that a *power given to a person or corporation by the United States may be subjected to taxation by a State.* The power conferred emanates from, and is a portion of, the power of the Government that confers it. To tax it, is not only derogatory to the dignity, but subversive of the powers of the Government, and repugnant to its paramount sovereignty. It is unnecessary to cite cases on this subject. The principles laid down by this Court in *McCulloch* v. *Maryland* (4 Wheat., 316), *Osborn* v. *The Bank of the United States* (9 Wheat., 738), and *Brown* v. *Maryland* (12 Wheat., 419), and numerous cases since which have followed in their lead, abundantly sustain the views we have expressed. It may be added that these views are not in conflict with the decisions of this Court in *Thomson* v. *Pacific Railroad* (9 Wall., 579), and *Railroad Co.* v. *Peniston* (18 Wall., 5). As explained in the opinion of the Court in the latter case, the tax there was upon the property of the Company, and not upon its franchises or operations. (18 Wall., 35–37.)

"The taxation of a corporate franchise merely as such, unless pursuant to a stipulation in the original charter of the Company, is the exercise of an authority somewhat arbitrary in its character. It has no limitation but the discretion of the taxing power. The value of the franchise is not measured like that of property, but may be ten thousand or ten hundred thousand dollars, as the Legislature may choose. Or, without any valuation of the franchise at all, the tax may be arbitrarily laid. It is not an idle objection, therefore, made by the Company against the tax imposed in the present case."

This Court, in *Railroad Company* v. *Peniston*, referring to *McCulloch* v. *Maryland*, said: "The tax, therefore, was not upon any property of the Bank, but upon one of its operations, in fact, upon *its right to exist as created*. It was a direct impediment in the way of a governmental operation performed through the Bank as an agent. It was a very different thing, both in its nature and effect, from a tax on the property of the bank. No wonder, then, that it was held illegal." And, recurring to the opinion of Chief Justice Marshall, in *McCulloch* v. *Maryland*, the Court observed: "Here is a clear distinction made between a tax upon the property of a government agent, and a tax upon the operations of the agent acting for the Government."

In the *Peniston* case, this Court, referring to *Osborn* v. *The Bank*, said:

"The tax held unconstitutional was a tax upon the existence of the bank—upon its right to transact business within the State of Ohio. It was, as it was intended to be, a direct impediment in the way of those acts which Congress, for National purposes, had authorized the bank to perform. For this reason the power of the State to direct it was denied, but at the same time it was declared by the Court that the local property of the bank might

be taxed, and, as in *McCulloch* v. *Maryland*, a difference was pointed out between a tax upon its property and one upon its action. In noticing an alleged resemblance between the bank and a Government contractor, Chief Justice Marshall said: 'Can a contractor for supplying a military post with provisions be restrained from making purchases within the State, or from transporting the provisions to the place at which the troops were stationed? Or could he be fined or taxed for doing so? We have not heard these questions answered in the affirmative. It is true the property of the contractor may be taxed. But we do not admit that the act of purchasing, or of conveying the articles purchased, can be under State control.'

"This distinction, so clearly drawn in the earlier decisions, between a tax on the property of a governmental agent, and a tax upon the action of such agent, or upon his right to be, has ever since been recognized."

A tax upon the local or tangible property of Federal agencies, the Court observed, has no necessary effect to deprive them of power to serve the Government, or hinder the efficient exercise of that power.

"A tax upon their operations is a direct obstruction to the exercise of Federal powers."

And, finally, in *Railroad* v. *Peniston*, the Court said:

"In this case the tax is laid upon the property of the railroad company precisely as was the tax complained of in *Thomson* v. *Union Pacific*. It is not imposed upon the franchises or the right of the Company to exist and perform the functions for which it was brought into being. Nor is it laid upon any act which the Company has been authorized to perform. It is not the transmission of dispatches, nor the transportation of United States mails, or troops, or munitions of war that is taxed, but it is exclusively the real and personal property of the agent, taxed in common with all other property in the State of a similar character. It is impossible to

maintain that this is an interference with the exercises of any power belonging to the General Government, and if it is not, it is prohibited by no constitutional implication."

II. The important cases bearing upon the subject intervening between the great *Bank Cases*, and *Thomson* v. *Pacific Railroad* and *Railroad Company* v. *Peniston*, were *Weston* v. *The City of Charleston* (2 Peters, 467), *Dobbins* v. *The Commissioners of Erie County* (16 Peters, 435), *Bank of Commerce* v. *New York City* (2 Black., 620), *The Banks* v. *The Mayor* (7 Wall., 16), and *National Bank* v. *Commonwealth* (9 Wall., 353); and in those cases the doctrine was consistently maintained and enforced that a State can not lay a tax which bears upon a *power* of the National Government, or, in the judgment of the Court, may hinder, impair, or burden, any "operation" of that Government, or interfere with or affect the efficiency of any "agency" of the National Government in performing the functions by which it is designed to serve the United States.

In *Weston* v. *The City of Charleston*, this Court declared the tax on the stock of the United States, involved, was unconstitutional, because it "operated upon the power" to borrow money on the credit of the United States, and was deemed by the Court to be "a burden, however inconsiderable," on "the operations of Government."

The Court, speaking by Chief Justice Marshall, in that case, again declared that the States can not by taxation, or otherwise, "*retard*, *impede*, *burden*, *or in any manner control* the operation of the constitutional

laws enacted by Congress to carry into execution the powers vested in the General Government."

The case of *Dobbins* v. *The Commissioners of Erie County*, adjudged that a State tax on an officer of the United States, for his office, or its emoluments, was void, mainly because of "*its interference* with the constitutional means" employed by the Government to execute its powers.

The Court, speaking by Mr. Justice Wayne, also said: "Does not a tax by a State upon the office, diminishing the recompense, *conflict* with the laws of the United States, which secures it to the officer in its entirety? It certainly has such an *effect;* and any law of a State imposing such a tax can not be constitutional, because it conflicts with a law of Congress made in pursuance of the Constitution."

The principles declared in *Weston* v. *The City of Charleston* governed the decisions of the Court in *Bank of Commerce* v. *New York City*, and in *The Banks* v. *The Mayor*, which adjudged that the bonds and other securities of the United States are "as much beyond the taxing power of the States as the *operations* themselves in furtherance of which they were issued."

The Court again declared, in those cases, that any interference by the State governments tending to the interruption of, or in derogation of, the full legitimate exercise of the powers granted to the National Government was prohibited by the Constitution.

In *National Bank* v. *The Commonwealth*, where the right of the States to tax the shares of the National Banks was reaffirmed, it was expressly conceded that

the agencies of the National Government are uncontrollable by State legislation so far as it may interfere with, or impair, their efficiency, in performing the service, or the functions, for which they are employed, or designed to perform.

Mr. Justice Gray, delivering the judgment of the Court in *Van Brocklin* v. *Tennessee* (117 U. S., 177), said :

"The liability of the property of the Pacific Railroad Companies to State taxation has been upheld, on the distinction stated in *McCulloch* v. *Maryland*, and *Osborn* v. *Bank of United States*, and reasserted in *National Bank* v. *Commonwealth*, namely, that although the railroad corporations were agents of the United States, the property taxed was not the property of the United States, but the property of the agents, and a State might tax the property of the agents, provided it did not tax the means employed by the National Government. *Thomson* v. *Pacific Railroad*, 9 Wall. 577 ; *Railroad Co.* v. *Peniston*, 18 Wall., 5."

III. The Supreme Court of California, it may be observed, in the case of *San Benito* v. *Southern Pacific Railroad Company* (77 Cal., 518), finally, but reluctantly, it would seem, submitted to the authority of the decision of this Court, in *California* v. *Pacific Railroad Companies* (127 U. S.), and held that an ordinance of the Board of Supervisors of San Benito County, imposing a license tax upon corporations or individuals engaged in the business of carrying persons or freight for hire on railroad cars, in the county, was void, so far as it assumed to affect the Southern Pacific Railroad Company, as the tax was deemed to be levied upon the use of the franchise granted to the Company by the United States, or the operations of the railroad in the exercise of that franchise.

It was determined that the franchise of that Company and its use were equally beyond the taxing power of the State, or any of its political subdivisions, agreeably to the decision of this Court in *California* v. *Pacific Railroad Companies*, which the Court felt constrained to obey.

III.

The Assignment of Errors.

FIRST.

The Court below erred in deciding, upon the facts found by the trial Court, that the value of "the franchise" of the Central Pacific Railroad derived from the United States, called the "Federal Franchise," was not included in the assessment of "the franchise, roadway, roadbed, rails, and rolling stock" of that Railroad as made by the State Board of Equalization for the year 1887. The Court should have decided, and erred in not deciding, upon those facts, that the value of the "Federal Franchise" was included in that assessment, and inseparable therefrom, and that the whole assessment was and is, therefore, illegal and void under the Constitution and laws of the United States.

I. It has been seen that by Section 10 of Article XIII of the State Constitution, the State Board of Equalization has authority to assess "*the* franchise, roadway, roadbed, rails, and rolling stock of all *railroads* operated in more than one county in this State."

The trial Court found that, in the year 1887, in question, the State Board of Equalization

"did assess *as a unit, and not separately*, THE FRANCHISE, roadway, roadbed, rails, and rolling stock of defendant's *railroad*, then being and situate within the State, at the sum and value mentioned in the amended complaint." (Finding XXX. Record, p. 142.)

The assessment, as made by the State Board of Equalization, for the year 1887, was thus an assessment, in the language of the State Constitution, of "*the franchise*, roadway, roadbed, rails, and rolling stock" of the *Central Pacific Railroad.*

II. It is clear that "*the franchise*" of a RAILROAD, which is contemplated by the State Constitution, and authorized to be assessed for taxation by the State Board of Equalization, is nothing but *the right to operate the railroad*, including the incidental right to charge and take tolls thereon, and the like.

The provision of the Constitution has no reference to a *corporate* franchise, or the corporate franchise of a corporation which may happen to own or operate a railroad in more than one county.

It is the franchise OF THE RAILROAD, which, under the State Constitution, is to be assessed for taxation by the State Board of Equalization.

The Constitution applies equally to all railroads, whether owned by corporations, or associations, or individuals, and the assessment provided for is wholly independent of the ownership, or the character of the ownership, of the railroad property assessed.

Under the State Constitution, therefore, the "franchise," authorized to be assessed and to be taxed, is nothing but the right of the owner to operate the railroad and charge and take tolls thereon.

The tax proposed by the Constitution, is consequently and necessarily a tax upon the *operations* of the railroad, in the exercise of the franchise or right to operate the property.

It has already been seen that by the provisions of the Political Code of California, the State Board of Equalization is required to enter in the "*Record of Apportionment of Railway Assessments*," the names of the *railways* assessed by the Board, the names of the *corporations* to which, or the name of the *person* or *association* to whom, each *railway* was assessed, with the total assessment of *the franchise*, roadway, roadbed, rails, and rolling stock for purposes of taxation, and that the Controller of State must enter in the duplicate record of the apportionment of railway assessments, the State taxes due the State, upon the assessment, by each *corporation*, *person*, or *association*, and the county taxes due upon the assessment apportioned to each county, by each *corporation*, *person*, or *association*.

The legislation interprets Section 10 of Article XIII of the Constitution, and shows distinctly that the word "franchise," used in that section, has no reference to a *corporate* franchise, if there is any such thing under the laws of California, but refers wholly to the right of the owner, whether a corporation, association, or individual, to operate a railroad situated in two or more counties of the State.

It is known to the Court from the case of *California* v. *Pacific Railroad Companies*, and, perhaps, other cases before it, that there are in operation in California various railroads owned by individuals, partnerships, and

corporations other than railroad corporations, such as mining and manufacturing corporations.

The existence and "the franchise" of railroads, owned by private persons, are expressly recognized by the provisions of the Political Code, to which we have referred; so that there can be no doubt as to what the Legislature supposed was meant by "the franchise" of the railroads referred to in Section 10 of Article XIII of the State Constitution.

As in California corporations can be organized only under general laws, it can not be said that corporate capacity is, in any sense, a franchise in the contemplation of the jurisprudence of that State.

It may be also observed that no doubt is expressed by the Supreme Court of California, in this case, in regard to the meaning of the constitutional provision under which the assessment was made, and the meaning we attribute to it seems to be accepted by that Court.

III. It has been seen that the findings below show that the State Board of Equalization assessed for taxation to the Central Pacific Railroad Company, for the fiscal year 1887, "*the franchise*," &c., of its *railroad* in California at the sum or value of eighteen millions of dollars.

The Board thus assessed against the Company for taxation, in that year, and the taxes based upon the assessment, and sought to be recovered were, in part, upon, *the right of the Company to operate its railroad* in the State.

The right of the Company to operate its railway, was,

as shown, "the franchise" which, by the Constitution, was intended to be assessed to the Company for taxation, and was, therefore, "the franchise" which was included inseparably in the assessment by the State Board of Equalization of "the franchise, roadway, roadbed, rails and rolling stock" of the Central Pacific Railroad for the fiscal year 1887.

The assessment, interpreted by the Constitution of the State, must be deemed to have been an assessment of "the franchise" contemplated by the Constitution, and "the franchise" of the railroad, in the meaning of the Constitution, is, as has been said, the right of the owner to operate the railroad.

The necessary legal conclusion from the finding below, therefore, is that the State Board included in its assessment for taxation to the Company, in 1887, its right to operate the Central Pacific Railroad within the State of California.

IV. The right of the Central Pacific Railroad Company to construct, maintain, and operate its railroad, in the State of California, was conferred upon the Company by and derived by it from the Government of the United States, and any assessment of the right of the Company to maintain and operate its railroad, in that State, for State taxation, is void, under the Constitution and laws of the United States, whether or not the Company received the same right from the State of California.

The right of the Company to operate its railroad in the State, is a *single right*, and a *single thing*, whether

the right was derived by the Company from one or more than one Government, and it can not be subjected to taxation by the State of California.

The fact that each Government has granted the right, does not create *two* rights. The two grants taken together confer nothing more than each of them separately conferred. A tax on "the franchise" of the Central Pacific Railroad, being nothing more or less than a tax on the right of the Company to operate its road, is a tax on its right to operate its railroad granted by the United States, or on the franchise granted by that Government.

The right possessed and exercised by the Company to operate its railway and do business in California is a *unit* and indivisible, and that right as a *unit* was embraced by and included in this assessment by the State Board of Equalization of the value of the property connected with the railroad of the Company in that State.

(1) The *right* to do a particular thing is entirely distinct from the *grant* of that right. If the right in itself, *per se*, is a single thing, a *unit*, it is not rendered *two* things by the *extrinsic* fact that it was granted by two authorities, each capable of granting it separately.

If the State of California and the United States each had, independently of the other, the power to authorize the Central Pacific Railroad Company to operate a railroad within that State, and each *has* so authorized it, the Company has only *one right* to operate its railroad. Its rights in that regard are not increased or changed by the fact that it has obtained authority from each government, if each had the power to grant that authority.

By *each* grant the Company could acquire *the right* to operate its railroad, and by *both* grants it could acquire nothing more.

As the Government of the United States had the power to authorize the Company to operate its railroad in California, and has so authorized it, a tax by the State of California upon such, the franchise of the Company, that is, upon its right to operate its railroad, is of *legal necessity* a tax upon a *franchise granted by the United States*, and is a tax upon the operations of one of the means and instrumentalities of that Government for the execution of its powers under the National Constitution, which is prohibited by that Constitution.

There are not *two* franchises of *this railroad*, the Central Pacific Railroad, stretching from the Pacific Ocean to Utah.

If "the franchise" of the railroad was conferred both by the State of California and the United States, it is, nevertheless, only *one franchise*, namely, the right to operate the railroad.

In granting franchises, each of those governments may be said to be the agent of the public, for whose benefit franchises are conferred on corporations or individuals. Whatever rights either one grants, are granted by the public, which is larger than any Government.

The case presented, therefore, is like that of a person who has *two deeds* for the same land—one made by one attorney in fact, and the other by another attorney in fact, for the owner. Each of such deeds conveys the land, and the two together do no more.

(2) The conclusion from this reasoning is, that "the franchise" of the Central Pacific Railroad Company,

is ONE AND INSEPARABLE, and that any attempt to tax it *as derived from the State of California*, even if such words were used, as they are *not*, in the assessment upon which this action is brought, would of necessity operate to tax the IDENTICAL THING ITSELF, and to tax, therefore, what was derived from the Government of the United States.

(3) If we should endeavor to reduce to practice the theoretical or metaphysical division of "*the franchise*," proposed by the State of California, in this suit, and consider the right of the Central Pacific Railroad Company to operate its road, derived from the State, as one thing, and its same right derived from the United States, as another and distinct, or different, thing, what results will follow? Plainly these.

If the State can tax the right so derived from itself, it can levy as great a tax upon it as it pleases, and may, of course, sell the right so assessed, in case of non-payment of the tax. There can be no such thing as taxable *property* which can not be sold for the tax, and the title to which can not be *transferred* to the purchaser. By such a sale, the property will pass *from* the delinquent *to* the purchaser. If a sale could be made of this particular right, then the Central Pacific would lose the right, and the purchaser would gain it.

But it is obvious that the right to operate its railroad, can not, by virtue of the State's taxing powers, be taken from the Central Pacific Railroad Company, or conferred upon any other corporation or individual. Nothing, then, would pass by such a sale, and as there is nothing to sell or transfer, there can be nothing to assess.

We are thus, by another line of reasoning, brought to

the same obvious conclusion, namely, that the franchise of the Central Pacific Railroad is not *two* things, but *one thing*, a unit, whether or not it was or is derived from two sources of power.

V. The Court below, as appears by its opinion in this case, overlooked the plain difference which exists, and is stated in the foregoing argument, between a franchise and a grant of a franchise, and assumed, or proceeded upon the idea, that there are *two franchises* of the Central Pacific Railroad, in the meaning of the State Constitution, and that the Railroad Company held and holds *two* rights to operate its railway—one derived from the State and one from the United States, the former of which is taxable by the State.

This is an incorrect view of the subject, as we have shown.

The *franchise* of the *railroad*, within the plain meaning of Section 10 of Article XIII of the State Constitution, is the owner's right to operate the railroad and take tolls thereon.

It will be perceived that this view of the meaning and effect of the provision of the State Constitution, relative to the assessment of "*the franchise*," etc., of railroads operated in more than one county, is accepted by the Court below as presenting the true construction of that instrument; but the learned Court, as we have observed, assumes that the Company holds *two* franchises to maintain and operate its railway in California, which, as we have submitted, is incorrect.

"The franchise" being the right to operate the railroad, is a single and indivisible right, whether the

authority be derived from one government or more than one. The fact that each government may have undertaken to grant the right, does not create two rights. The two grants, taken together, confer nothing more than each of them separately conferred.

As a tax on the franchise of the Central Pacific Railroad is nothing more or less than a tax on the right of the Company to operate its railroad, such a tax is a tax on its right to operate its railroad derived from the Government of the United States, and unconstitutional.

That the learned Court below overlooked the legal difference which has been pointed out between a franchise and the grant of a franchise, clearly appears by the following passage in its opinion:

> "A license, or the right to exercise a privilege, is not necessarily destroyed or merged by procuring a similar license or right from another authority, any more than is a *title* to real estate merged by buying in a *conflicting title*, or taking a conveyance for further assurance from the grantor."

The illustration is unhappy and, we submit, faulty in its law.

There can, properly speaking, be no such thing as conflicting *titles* to property. There may be conflicting *claims* of title, but there can be only one true title. Of course, then, the owner of the true title does not merge it by buying a pretended or colorable title. But the illustration given by us above does present the point.

Suppose that *A* has two general attorneys in fact, *B* and *C*. *B*, in his capacity as the attorney of *A*, grants to *D* an estate for life in certain lands. *C*, as such attorney in fact, simultaneously grants to *D* a like

estate in the same property. *D* has only *one* estate, not two, and can be taxed only for one. So, if the grant by *C* is of a fee, *D* has only one estate, a fee.

So here: the public, which is the paramount authority, may be said to have two authorized agents, the State and the United States. Each may be supposed to have power to grant the right in question. But, in doing so, each acts as the agent of the public, which is larger than either Government. What either Government grants, it grants as such agent, and the grant is made by the public, which is the principal. When both of these agents undertake to grant this right, their acts, whether joint or several, can accomplish only the single result. Whether one, or each, or both together, makes or make the grant, in either case, all that the grantee obtains, all that he has, all he can be taxed for, is the single and indivisible right to operate the road.

This right can no more be divided in imagination for taxing purposes than it can for any other purpose.

Whether this result be called a *merger*, or *union*, or by any other name, the fact is unquestionable; and a tax levied upon the franchise is levied upon the right itself.

As this right was granted by the National Government for public and national purposes, and is one of the instrumentalities of that Government, it can not be taxed by the State, even though the State had undertaken to grant the right.

VI. This Court, in the case of *California* v. *Pacific Railroad Companies* (127 U. S., 1), had no occasion to determine or consider any question upon Section 10 of

Article XIII of the State Constitution relative to the assessment and taxation of "the franchise," &c., of these railroads which we have discussed, or any question involved in an attempt by the State authorities to assess and tax a *part* of *the franchise* of the Central Pacific Railroad upon a pretension that the same was derived from the State, and may be *segregated* from that part granted by the National Government, such as is presented in the present case.

The Circuit Court, in the former case, found "that in making said pretended assessment, the State Board of Equalization included the full value of *all* franchises and corporate powers held and exercised by the defendants." (127 U. S., 35.)

The Board, therefore, undertook to assess the value of all the franchises and corporate powers conferred by the United States; and this Court decided that such action, on the part of the Board, was in violation of the Constitution and laws of the United States.

There was no attempt made in that case to assess and tax the franchise of the Company upon the pretense that only that part of the unity derived from the State, was assessed and taxed; and, of course, this Court did not decide or intimate that such a thing could be done, consistently with the Constitution and laws of the United States.

The fact that the Board included in the assessment, in question in that case, the value of *all* the Federal franchises, was sufficient to annul the assessment.

The question presented, in the case now before the Court, was alluded to, as one which might arise, in

another case, by Mr. Haymond, in the argument of the case of *California* v. *Pacific Railroad Companies*, as follows:

"How is that part of the franchise granted by the State to be segregated from that part granted by the General Government? What part of the life of this being is at the mercy of the State? Upon what member of its body may the tax collector execute his judgment of death? These would be pertinent questions, if an *attempt* had been made to assess and tax a *part* of the franchise of the Company; but no such attempt has been made. The paltry considerations of 'mine' and 'thine' have not agitated the State Board of Equalization, but with characteristic audacity it has seized upon the *whole*."

VII. The trial Court, in the present case, while finding that the State Board of Equalization assessed "as a unit, and not separately, *the franchise*, roadway, roadbed, and rolling stock" of the Central Pacific Railroad, found that the Board, "in making its assessment and valuation therefor of defendant's *franchise*, did not include, assess, or value any *franchise* or corporate power held or exercised by the defendant under the Acts of Congress hereinbefore mentioned, or any Act of Congress," and that the Board, "in making said assessment and valuation therefor, upon defendant's *franchise*, roadway, roadbed, rails, and rolling stock, for purposes of taxation for the fiscal year 1887, did not include in its assessment and valuation therefor, any Federal *franchise*, then possessed by defendant, nor *any franchise* or thing, which said Board could not *legally include* in such assessment or valuation." (Finding XXXV, Rec., p. 142)

The Court proceeds to find further: "*the franchise*, &c., of defendant's railroad, were valued by said Board, at their actual value, and in proportion to their values respectively."

One of the vices of the latter finding (XXXV) is that it is *repugnant* to the previous finding, that the Board assessed as a unit, and not separately, "*the* franchise," &c., of the railroad (XXX).

It is "*the* franchise," not "one of the franchises," or "a part of the franchise;" just as the assessment is of "*the* rolling stock," not "part of the rolling stock;" so that by the very language of finding XXX the Federal franchise was assessed for taxation by the Board.

Another vice of the latter finding (XXXV) is that it is substantially a finding of *law*, and not a finding of a *fact*, in any just sense.

The trial Court assumed to decide for itself, in making up the finding, what franchise or thing the Board could or could not "*legally include*" in the assessment; but we are not favored with the ideas of the trial Court as to *what* franchise or what thing the Board could or could not "*legally include*" in the assessment.

It was not for the trial Court to intrude such a finding, in the record, as a pretended finding of *fact* in this case.

Moreover, the trial Court did *not* find, in finding *No. 35*, that "the franchise" assessed was "the franchise *derived from the State of California*."

Under the propositions of law, which we have submitted to the learned Court, what is called the Federal franchise, *was* assessed by the Board, when it assessed,

in very terms, as found below, "*the franchise*" of the railroad, as legally an *inseparable* part of the *unity*, described as "the franchise" of the Central Pacific Railroad.

"The franchise" of the railroad, or the right in the Company to operate its railroad, is a single right, from how many sources soever derived; and being derived from the National Government, that right could not be assessed for taxation, agreeably to the Constitution of the United States, whether or not the right had been granted by the State also to the Railroad Company.

By applying the proper principles of law to the express finding of fact, that the Board did assess, as a unit and not separately, "the franchise," etc., of the Company, we discover that their action of legal necessity involved the assessment of the right derived by the Company from the United States to operate its railroad in the State of California, in violation of the National Constitution.

The finding of the trial Court that the State Board did assess "*the franchise*" of the Central Pacific Railroad, is, in its legal effect, a finding that it assessed the franchise of the railroad derived from the National Government, and it should have been so adjudged by the Court below.

SECOND:

The Court below erred in affirming the judgment of the Superior Court, and in not reversing that judgment, because the Superior Court found, in its 30th Finding of Fact, in the Record, that the State Board of Equalization, on August 13, 1887, "did, for the purpose of taxation for the fiscal year 1887, assess as a unit, and not separately, the franchise," &c., of the Central Pacific Railroad, then being and situate within the State of California; but the Superior Court did not find, in its 35th Finding of Fact, or in any other finding of fact, in the record, that "the franchise" of the said railroad, assessed as aforesaid by the said Board of Equalization, for the fiscal year 1887, was, in fact, the franchise of the said Railroad "derived from the State of California."

I. As has been already said, it was for the trial Court to find, *expressly*, what was "the franchise" assessed for taxation by the Board, and from what source or authority it was derived, if there were two franchises of the railroad, in the meaning of the State law, and whether or not the franchise assessed, was, in fact, the franchise *derived from the State of California.*

The Court, in its 30th finding, found, that the Board did assess as a unit, and not separately, "*the franchise*," &c., of the railroad, and in the 35th finding, on which its judgment was apparently based, found that the Board did not *include* in its *assessment and valuation of defendant's franchise,* any Federal franchise, "nor any franchise which it could not *legally include* in such assessment or valuation." (Rec., p. 142.)

There is nothing to show that the trial Court supposed that the Company possessed any Federal franchise, when the assessment was made.

But the question was and is, not what franchise could be *legally included*, or was *included*, by the Board, in the assessment, but what particular franchise was, in fact, *assessed and valued* by the Board, for the purpose of State taxation.

Was it the particular franchise of the railroad *derived from the State of California?*

The finding, No. 35, does not say that it was.

There is, therefore, *no* finding, in this record, that the assessment sought to be enforced, in this action, was, in fact, an assessment of the franchise of the railroad *derived from the State of California.*

II. Therefore, in any view of the law in regard to the franchise, or the franchises, of the railroad, and their unity, or diversity, the conclusion of law of the Superior Court, and the judgment of that Court against the plaintiff in error, as based on finding No. 35, were not warranted, or supported, by that finding, and it should have been so decided by the Court below.

The assessment, in any view of the law as to the franchise of this railroad, which has been discussed, was illegal and void, under the Constitution of the United States, unless the franchise assessed was, in fact, derived from the State of California, and not from the National Government.

There is no finding by the trial court that the assessed franchise was, in fact, derived from the State, and not from the United States.

The assessment, therefore, was illegal and void, and constituted no ground or basis for a recovery of the alleged taxes sought to be collected, in this action, under the supreme law of the land.

THIRD.

The Court below erred in deciding that the State of California has the power to tax a part of "the franchise" of the Central Pacific Railroad, upon a claim that a part of that franchise was derived from the State, and that the same can be lawfully assessed for taxation by the State Board of Equalization, under the Constitution and laws of the United States.

I. The theory of the majority of the Court below, that the franchise of this railroad can be *segregated* into two franchises, a State franchise, and a Federal franchise, for the purpose of taxation by California, is very effectually disposed of by Mr. Justice McFarland, at the close of his opinion, in these few words:

"The Court below found that the Board 'did assess as a unit, and not separately, the franchise, roadway,' &c. I can not conceive how a Court can, first, *separate* it, or, second, if it could, how it could determine *which part to throw away*. *Moreover*, the main foundation of the doctrine of *McCulloch* v. *Maryland*, is that the power to tax includes the power to destroy, and thus a State might, under the guise of taxation, destroy or materially cripple an instrumentality of the Federa Government. And is it not manifest that in the case at bar that principle protects the instrumentality here involved from injury or destruction under the pretense that only that part of the unity *which comes from the State is taxed? Are not the effects and consequences the same?*"

There can be no doubt that a tax purported to be levied on the so-called *State franchise* is a tax upon an instrumentality by which the Government effects its objects, and a tax upon the operations of that instrumentality, within the doctrines of this Court in the great cases to which we have referred.

The United States selected this corporation as an agency for carrying out a National object, and the right of the corporation to operate its railroad, or, in other words, the *franchise of the railroad*, whether conferred by State or National authority, or by both the State and Nation, is an *instrumentality* by which the United States effects its objects.

A tax upon the franchise of the railroad, whether State or Federal, is, therefore, a tax upon the operations of an instrumentality of the United States, and is a direct impediment in the way of governmental operations, performed through the corporation as an agency of the United States.

There are no operations of the corporation, as an agency of the Government, which are performed exclusively in the exercise of any *State* franchise in connection with its railroad, but *all its operations are in the exercise of its entire franchise*, and a tax purporting to be levied on the *State* franchise is, therefore, a tax on the operations of the corporation in the exercise of the Federal franchise, and a tax directly on the Federal franchise itself.

No argument is needed to prove that a tax upon the so-called State franchise of this railroad, in the meaning of the term "franchise," as used in the Constitution of

California, is to all legal intents and purposes, a tax on the franchise conferred by the United States, and a tax on a power derived by the Company from the United States.

But independently of this, there can be no just doubt that a tax purporting to be imposed upon the State franchise, is a direct *burden* upon the franchise derived from the United States, whether or not it is in legal effect a tax *upon* that franchise.

This Court, in *California* v. *Pacific Railroad Companies* said, in regard to the franchises of the Pacific Railroads, that "the State of California can neither take them away, nor destroy nor *abridge* them, nor *cripple them by onerous burdens.*"

The Court further said: "It may undoubtedly tax *outside visible property* of the company, situated within the State; that is a different thing."

Any State tax on the so-called State franchise, is of necessity, in its effect, an abridgement of, and a crippling burden on, the Federal franchise. The fact that the tax may be ostensibly imposed on the State franchise, can make no difference in the effect of the tax as an interference with the Federal franchise, and the operations of the railroad in the use and employment of the Federal franchise.

When Congress selected the Company, with its State franchise, as an agency for public and national objects, it did not intend that such franchise should be taxed, and that the franchise and the railroad should be subject to seizure and sale for non-payment of taxes on its franchise, and that the operations of the Government,

through the railroad, should be interfered with and embarrassed, if not defeated, by the execution of the State power of taxation against the corporation and its railroad.

As said by this Court, in the former cases, taxation by the State of the right of the corporation to operate its railroad, which is "the franchise of the railroad," is necessarily the exercise of a purely arbitrary authority. It has no limit but the discretion of the State. "*The value of the franchise is not measured like that of property, but may be ten thousand or ten hundred thousand dollars, as the Legislature may choose. Or, without any valuation of the franchise at all, the tax may be arbitrarily laid.*" (127 U. S., 41.)

It seems absurd to say that any right of the Central Pacific Railroad Company to operate its railroad in California, which may have been conferred by the State, is the subject of State taxation, consistently with the constitutional laws by which the corporation and its franchises were constituted by Congress the agency and instrumentalities for carrying out National objects.

Besides, it is to be observed that the United States is not only the grantor of the fundamental and vital franchise of this railroad, but is the *mortgagee* of the property and the franchises of the corporation, connected with its railroad, and as such has a proprietary interest in any State franchise held by the corporation in connection with its railroad in California.

Any interference by the State, under its tax laws, with the so-called State franchise, operates as an interference with the proprietary interest of the United States in that franchise, and is distinctly unconstitutional.

II. It is to be further observed that all the franchises of the Central Pacific Railroad are specifically affected and controlled by the provisions of the Sinking Fund Act of May 7, 1878, in the manner and for the purposes therein declared, and State taxation of *any* franchise of the road, is directly subversive and destructive of the special rights and interests of the United States in that franchise, and the exercise of that franchise by the Company, under that Act, and repugnant to the provisions of the Act.

By the Sinking Fund Act the half of the compensation due for services to the Government on the bond-aided portion of the railroad, which, by the Act of 1864, was to be paid to the Company, is to be retained by the United States, and the Company is required to pay every year into the public treasury, twenty-five per cent of its whole net earnings realized by the use and exercise of its franchises. (20 Stats., 56; Sinking Fund Cases, 99 U. S., 700.)

By that Act, Congress, in the exercise of the power to amend the Acts of 1862 and 1864, as held by this Court, *appropriated the fruits of the franchises of the Central Pacific Railroad,* for the purpose of meeting the debt of the Company to the United States, and thereby affirmatively declared its will that the income of the Company, derived from the use and exercise of its franchises, should not be burdened, impaired, or affected, in any manner, by any taxation by the State of California.

If the State can, in the exercise of a power, in its nature purely arbitrary, tax any franchise of the railroad by which its earnings and income are realized, the State

can not only interfere with, but entirely defeat, the operation of the Sinking Fund Act, and frustrate the entire object of Congress in passing that Act.

The idea that the State of California may stand between the Company and the United States, in respect to the execution of the Sinking Fund Act, and tax any franchise of the railroad, by the use of which the objects of that Act were intended by Congress to be accomplished, and are accomplished, is one that can not be entertained for a moment.

III. The defendant in error relied upon certain cases cited by it, as authority for the proposition which was accepted by the majority of the Court below, in respect to the right of California to tax a *part* of the unity, called the franchise of this railroad, under the claim that it was derived from the State; but none of those cases, we submit, tend, in the remotest degree, to support that proposition. As the cases may be cited to this Court, we will briefly refer to them. Some of them have been mentioned already.

Two of the cases, *Thomson* v. *Pacific Railroad* (9 Wall., 579), and *Railroad Co.* v. *Peniston* (18 Wall., 5), are cited and distinguished by this Court, in *California* v. *Pacific Railroads* (127 U. S., 41).

In neither of those cases, was any State tax attempted to be laid upon the *franchise* of the railroad, or any *franchise* of the corporation.

The taxes, in both cases, were levied upon the tangible property of the companies, and not upon their franchises or operations.

In *Western Union Telegraph Co.* v. *Massachusetts* (125 U. S., 530), it was decided that the State tax in question though nominally a tax on the franchise, was, in reality, merely, an *excise* upon the *capital* of the corporation, which, as had been previously decided in *Hamilton Co.* v. *Mass.* (6 Wall., 632), was not a property tax. Not being a tax upon the franchise at all, it was, of course, held not to be a tax upon any Federal franchise, and the decision was placed solely upon that ground. The corporation there was a New York corporation, holding no franchise under the law of Massachusetts. If the tax had been really laid upon the franchise, it would necessarily have been void.

In *Home Insurance Co.* v. *New York* (134 U. S., 594), the corporation held no Federal franchise. It claimed that a certain tax levied upon its franchise, was, in effect, levied upon its capital, which was composed, in part, of United States bonds. But this Court held that the tax was not levied upon its capital, nor upon its business, but was levied merely upon its right to be a corporation, and that the tax was, therefore, valid,

In *Van Brocklin* v. *Tennessee* (117 U. S., 151), the proposition decided and discussed was that land belonging to the United States could not be taxed by a State.

In *Hamilton Co.* v. *Massachusetts* (6 Wall., 632), a certain tax was held to be a tax upon the corporate franchise, in the nature of an excise, and not a property tax. The corporation held no Federal franchise, and no question concerning one arose in the case.

IV. The question in the present case is distinctly governed by the principles of the decision of the Supreme Court of California itself, in *San Benito Co.* v. *Southern Pacific R. R. Co.* (77 Cal., 518), which overruled the earlier case of *Central Pacific R. R. Co.* v. *State Board of Equalization* (60 Cal., 35), and adjudged that a county ordinance imposing a license tax upon individuals or corporations in the business of carrying persons or freight for hire on railroad cars, was unconstitutional so far as it affected the Southern Pacific Railroad Company, because that Company was operating its road under a franchise derived from the United States.

It was held, under the authority of the decisions of this Court, that any attempt by the State or its subdivisions to tax the right of the Southern Pacific Company to operate its railroad, was an attempt to tax the operations of one of the instrumentalities of the National Government, which was beyond the power of the State.

The effect of the decision, in the present case, was to overrule *San Benito Co.* v. *S. P. R. R. Co.*, as well as *People* v. *C. P. R. R. Co.* (83 Cal., 393.)

FOURTH.

The Court below erred in not reversing the judgment of the Superior Court upon the ground that "the franchise" of the railroad of the plaintiff in error is subject to the lien of the mortgage of the United States, and the interest of the United States therein under the mortgage, and that the franchise, therefore, can not be taxed, or assessed by the State Board of Equalization for taxation, by the State of California, agreeably to the Constitution of the United States.

I. The Pacific Railroad Act, of July 1, 1862, section 5, declares that the issue and delivery of the bonds of the United States to the Company "shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures, and property of every kind and description." (12 Statutes, 492.)

The 29th finding of fact, in this case, states that—

"Under said Acts of Congress of July 1, 1862, and July 2, 1864, there were loaned and issued by the United States to the said Central Pacific Railroad Company, of California, bonds at the rate of $16,000 per mile of said railroad from Sacramento easterly to the easterly line of the State of California. That said bonds were so loaned and issued prior to the adoption of the Constitution of 1879 of said State of California, and were outstanding and unpaid at the time of the assessment which is sued on herein; that by virtue of said Acts of Congress the United States now has, and ever since the issue of said bonds has had, a lien upon said railroad, its rolling stock, fixtures, and franchises." (Record, p. 139.)

By the common law, a mortgage of property is a conveyance of the title, subject to a condition that if the debt secured be paid as stipulated, the conveyance is to become inoperative. (Brobst *v.* Brock, 10 Wall., 519.)

II. If there are two franchises *of this railroad*, one derived from the State, and the other from the United States, can the State tax the State franchise, that is to say, the right of the Company to operate the railroad conferred by the State, as against the interest of the United States in the franchise under the mortgage, agreeably to the doctrines of this Court, as expounded by Mr. Justice Gray, in the leading case of *Van Brocklin* v. *State Bank of Tennessee?* (117 U. S., 151.)

It seems not. That franchise is not "outside, visible property of the Company, situated within the State," in the language of Mr. Justice Bradley in the Pacific Railroad cases, but is an inseparable part of the means and instrumentalities by which the operations of the Company, in the performance of the duties required by the Government, are carried on, and it would clearly seem, therefore, that the interest of the Government, in the franchise, under the mortgage, can not be subjected to State taxation, under the doctrines of this Court.

FIFTH.

The Court below erred in not reversing the judgment of the Superior Court, in this case, upon the ground that the assessment of "the franchise," &c., of the Central Pacific Railroad, for the year 1887, as made by the State Board of Equalization, did not show expressly *on its face* that "the franchise" assessed for taxation by that Board was the franchise of the Railroad derived from the State of California, and that the "Federal Franchise" was not assessed, or included in the said assessment, by that Board. The Court below should have adjudged, and erred in not adjudging, that the said assessment was *coram non judice* and void, under the Constitution and laws of the United States.

I. As has been seen, the principal finding (finding 30), of the trial Court in respect to the assessment on which this action was based, is, that the State Board of Equalization, on August 13, 1887, "did, for the purposes of taxation for the fiscal year 1887, *assess* as a unit, and not separately, *the franchise*, roadway, roadbed, rails, and rolling stock" of the Central Pacific Railroad.

After making this finding of fact, the trial Court proceeded to make another finding (35), which has been already commented on, as substantially repugnant to finding 31, and as a finding of law, which the Court was not warranted in making.

It has been also observed that this 35th finding does not state that the franchise assessed by the Board was *the franchise derived from the State of California*, or that in making the assessment for 1887, the Board

included, assessed and valued *only* the *franchise derived from the State of California.*

The finding 30 is the finding which gives the actual form and contents of the assessment as made by the Board, on August 13, 1887, and it appears therefrom that the actual assessment, as made by the Board, was an assessment expressly and specifically of "*the franchise*, roadway, roadbed, rails, and rolling stock of the Central Pacific Railroad," and that the assessment did not *disclose upon its face, or show in terms*, that "the franchise" assessed against the Company was "the franchise" *derived from the State of California*, as the only franchise of the railroad in respect to which the Board had or could have any jurisdiction.

The assessment itself, and the minutes of the meeting of the Board at which the assessment was made, were introduced in evidence, and are given in the statement which precedes this argument.

The language of the assessment is "*the franchise*, roadway, roadbed, rails, and rolling stock of said Company, within this State," and that "*the said franchise*, roadway, roadbed, rails, and rolling stock, for the year 1887, be and the same are hereby assessed to the said Central Pacific Railroad Company at the sum of eighteen millions of dollars." (Rec., p. 148.)

The meaning is, that the railroad of the Company, situated within the State, with the franchise by which it is operated within the State, is assessed.

As the Company operates its railway within the State under a franchise derived from the United States, the language of the assessment, of course, applies to and includes that franchise.

If the words, "*derived from this State*," had been inserted after the word "franchise," as they were, as shown, in 1888, the case would have been very different.

It thus appears from the assessment itself, which was admitted in evidence, by the trial Court, that it did not show upon its face, that "*the franchise*" of the railroad, assessed for taxation by the State Board of Equalization, "for the year 1887" was the franchise of the railroad *derived from the State of California*, or that the "Federal franchise" was not assessed, or included, in that assessment.

II. This Court has recognized and affirmed the general doctrine of the American Courts, that taxes are not *debts*, which are obligations for the payment of money founded upon contract, express or implied. Taxes are imposts levied for the support of the Government, and operate *in invitum*. (Lane County *v.* Oregon, 7 Wall., 71, 80; Meriwether *v.* Garrett, 102 U. S., 514.)

The learned Court, in *Lane County* v. *Oregon*, said: "The greatest of English elementary writers upon law, when treating of debts in their various descriptions, gives no hint that *taxes* come within either; while American State Courts, of the highest authority, have refused to treat liabilities for taxes as debts, in the ordinary sense of that word, for which actions for debt may be maintained."

The Court then cites: *Pierce v. Boston*, 3 Metcalf, 520; *Shaw v. Pickett*, 26 Vt., 486; *Camden* v. *Allen*, 2 Dutcher, 398; *Perry* v. *Washburn*, 20 Cal., 350.

Nor is the nature of taxes affected by the fact that in some States an action of debt may be instituted for their recovery. The form of procedure can not change their

character. (Cooley on Taxation, 16; City of Augusta *v.* North, 57 Me., 392.)

Tax proceedings are thus *in invitum*, and to be valid must be *stricti juris*. (Cooley on Taxation, 259; Moss *v.* Shear, 25 Cal., 46; People *v.* Mahoney, 55 Cal., 288; Lake Co. *v.* S. B. Q. M. Co., 65 Cal., 20; People *v.* C. P. R. R. Co., 83 Cal., 400.)

This doctrine is particularly applicable to the special proceeding in California, for the collection of taxes assessed upon railroads operated in more than one county by action against the owners of the property, which is in derogation of the GENERAL LAW of the State for the collection of taxes.

The Supreme Court of California in *People* v. *Central Pacific Railroad Co.* (83 Cal., 408, 409), said:

"Under this *special law*, no notice of delinquency is ever published, but if the taxes remain unpaid until after the first Monday in February, the Controller must then commence an action for the recovery of the taxes due the State, and the various counties, and cities and counties of the State, together with five per cent. penalty for delinquency and the costs of suit; and it is specially provided that, whether the tax be then paid before or after judgment, the defendant shall also pay such counsel fees as the Court may allow. It will thus be seen that, under *this* law, the tax payer is not only burdened with heavy costs and expenses not provided for by the *general law*, but in addition to that, and notwithstanding the fact that the State has, as in all other cases, a first lien upon everything which he owns, any particular portion of this property which the representatives of the State may see fit to direct is liable to be summarily seized upon *attachment*, and if it be personal property, taken out of his possession, held pending the suit, and finally sold under judgment for what it will bring. If there then be a deficiency, the original first lien still remains upon all the balance of his property. The inequalities

and the possibilities of injustice under such a provision are certainly very great. * * * Under the *general law*, the sale for taxes upon realty is of the realty, or some part thereof. Such a sale will be for the taxes upon personal property, if assessed to the same person. Under such a sale, there is a year at least in which to redeem. Under this *special* law, if the proceeding goes to judgment and sale, the sale may be entirely of personal property, from which there is no redemption; if of realty, there are but six months in which to redeem."

III. The general doctrine in regard to taxation is well settled, that a legal and valid assessment, according to law, is an indispensable basis for the support of the tax that may be levied upon it, and is the first step in the proceedings against individual subjects of taxation, and is the foundation of all which follow it. Without such an assessment they are nullities. (Cooley on Taxation, 259; Hilliard on Taxation, 291; People *v.* Hastings, 29 Cal., 451.)

By the Constitution and Political Code of California, the State Board of Equalization is a body invested with special and limited jurisdiction to act as assessor of the franchise, roadway, roadbed, rails, and rolling stock of certain railroads, described as railroads operated in more than one county in the State.

The Political Code, § 3666, prescribes that the Board must prepare each year a book, called "Record of Assessment of Railways," in which must be entered each assessment made by the Board, and another book, called "Record of Apportionment of Railway Assessments," and duplicates of these records constitute the warrant for the State Controller to collect the taxes levied upon the property assessed by the Board.

By the Constitution and laws of the United States, as adjudged by this Court, no franchise of any railroad in the State of California, conferred by the Government of the United States, can be assessed by this Board, and every such franchise is exempt from the jurisdiction of the Board, which has no power or authority to assess it, or include it in any assessment, for the purpose of taxation by the State.

By the supreme law of the land, the jurisdiction of the Board is thus confined and limited to the assessment and valuation of the franchises of the railroads mentioned, which were derived by their owners *from the State of California,* as much so, indeed, *as if that limitation had been written into the Constitution and Political Code of the State.*

By the effect of the decisions of this Court, any assessment by the State Board of Equalization of the franchise of a railroad in the State, which has derived any franchises from the Government of the United States, must show on *its face* that the franchise assessed was *conferred by the State of California,* and was thus the lawful subject of assessment by the Board for the purpose of State taxation. Otherwise, the Court must consider the assessment, in any view, *coram non judice*, and void.

That such is the effect of the decisions of this Court was distinctly recognized by the Attorney-General of California, and the State Board of Equalization, when the assessment of the property of this Company for the year 1888 was made.

The Board, by the advice of the Attorney General,

made it appear expressly on *the face of its record* that the assessment of the franchise of the railroad for that year, was confined and limited to the franchise *derived from the State of California.* (Record, p. 163.)

The principle in regard even to *courts of justice* is as old as the common law, that there is no legal presumption in favor of the jurisdiction of a court of special and limited jurisdiction, and that the facts essential to the exercise of such jurisdiction must appear upon the *record* of the proceedings.

The rule that in such an inferior court the maxim *omnia presumuntur rite esse acta,* does not apply to give jurisdiction, never has been questioned. (Rex *v.* Hulcott, 7 T. R., 587; Rex *v.* All Saints, 7 B. & C., 785; Rex *v.* Bolton, 1 Q. B., 66; Chew *v.* Holroyd, 8 Ex., 249.)

The presumption is against the jurisdiction of an inferior court of special and limited power, and its action is *coram non judice* and void, unless its jurisdiction both as to the subject-matter and the parties to be affected, appears on the face of its record. (Thatcher *v.* Powell, 6 Wh., 127; Walker *v.* Turner, 9 Wh., 548; Galpin *v.* Page, 18 Wall., 356, 366, 371.)

This Court said, in Galpin *v.* Page, that the doctrine applied even to a court of general jurisdiction, in the exercise of special and summary powers wholly derived from statutes.

"The facts essential to the exercise of the special jurisdiction," said Mr. Justice Field, "*must appear in such cases upon the record.*"

"But where the special powers conferred are exercised in a special manner, not according to the course of the common law, or where the general powers of the Court are exercised over a class of cases not within its ordinary jurisdiction, *no presumption of jurisdiction will attend the judgment of the Court.* The facts essential to the exercise of the special jurisdiction must appear in such cases *upon the record.*"

"The ground of the jurisdiction of the magistrate does not appear on the face of the proceedings before him; without which this Court must consider them as *coram non judice.*" (Walker *v.* Turner, 9 Wh., 548.)

Not only must the declaration in an inferior Court allege jurisdiction, but, also, in an action in a Superior Court upon the judgment of an inferior Court, duly obtained, it must be averred and proved that the authority of the Court embraced the subject-matter, and was so exercised as to bind the parties. (2 Black on Judgments, § 966.)

These principles apply to the action of the Courts in tax cases; as where the proceeding is by the judgment of a Court condemning land to be sold for delinquent taxes, there is no presumption in favor of the regularity of the judgment, and the facts necessary to confer the jurisdiction exercised must appear affirmatively on the record. (Thatcher *v.* Powell, 6 Wh., 119, 127; Shivers *v.* Wilson, 5 Har. and J., 132.)

IV. Agreeably to these general principles of jurisprudence, it is clear that the record of an assessment by the California State Board of Equalization of the franchise of the Central Pacific Railroad, must disclose *upon its face* that the franchise which the Board pur-

ported to assess for taxation was derived from the State of California, and that in the absence of such a showing in the appropriate record of the Board, the Court must consider the proceeding *coram non judice.*

By the Constitution and laws of the United States the Federal franchise is wholly exempt from assessment and taxation, and entirely without the jurisdiction of the Board, and any assessment which includes it is wholly void.

As a subject will be presumed to be without the jurisdiction of the Board which does not distinctly appear to be within it, the record of the Board to have any validity as an assessment of the franchise of the railroad must show that the action of the Board was confined to the franchise, and the only franchise, if any, which the law of the land authorized it to assess for taxation in California.

V. The Court below, therefore, erred in affirming the judgment of the trial, as the findings of fact show that it did not appear upon the *face of the assessment* that the franchise valued for taxation by the State Board of Equalization was confined to the franchise derived from the State of California, and that the Federal franchise was not included in the assessment.

SIXTH.

The Court below should have reversed, and erred in not reversing, the judgment of the Superior Court, on the ground that the Superior Court, in deciding the case, and in making its, so-called, Finding of Fact, No. 35, erroneously disregarded the evidence for the defendant, showing, or tending to show, that the State Board of Equalization did, in fact, include, in its assessment of "the franchise," &c., of the Central Pacific Railroad, for the year 1887, the value of the franchise derived from the United States, called the "Federal franchise," upon the theory that such evidence was incompetent as having the effect of contradicting the record of the proceedings of the Board, which, it said, "can not be done," and that such record was conclusive evidence "that a Federal franchise was not included in that assessment."

I. The opinion of the Superior Court, upon which the finding of fact, No. 35, and its judgment, were based is made a part of the record, on appeal, by the "*statement on motion for a new trial*," answering to a bill of exceptions in the case. (Rec., pp. 224–225.)

The record states that "all of the evidence introduced upon the part of the *defendant* tending to show that the Federal franchises of the defendant were assessed by the State Board of Equalization, was introduced *subject to objection on the part of the plaintiff, on the ground of incompetency*, which objection was overruled *pro forma* by the Court, with the understanding that a motion to strike out the same might thereafter be made by counsel for the plaintiff."

On the oral argument of the case, the Court called the attention of counsel for the plaintiff to this understanding, and to the fact that the motion to strike out the testimony of the defendant, had not been made.

One of the counsel for the plaintiff then stated that the plaintiff moved "the Court to order stricken out from the record *all the testimony in relation to what was considered or embraced in the assessment made by the State Board of Equalization for the year 1887.*"

Afterwards, and before the Court ruled on the motion, plaintiff's counsel stated: "Upon conferring with my associates, and as I wish to try this case *with a great degree of caution*—AND AS, IF THAT TESTIMONY IS IMMATERIAL, YOUR HONOR WON'T REGARD THE TESTIMONY, I will withdraw the motion to strike out made during my argument."

The counsel evidently had confidence in the learned Court.

The record then states that the Court "in its written opinion, upon which the findings were based, after determining, as a fact, from a preponderance of the evidence before it, that the Federal franchise of defendant was not assessed or included in the assessment, uses the following language":

"But if the parol evidence offered did not weigh in plaintiff's favor, and *if* by a preponderance of such evidence defendants COULD HAVE *shown* that the State intended to and did include a Federal franchise in the assessment, I think the Court WOULD HAVE TO DISREGARD IT as INCOMPETENT. The effect of such *parol evidence* would be to *contradict the record*, WHICH CAN NOT BE DONE.

"The *best* and *only* EVIDENCE of the acts and intentions of deliberative bodies, must be drawn from the *record* of its intentions.

"From both standpoints of fact and of law, the findings must be that a Federal franchise was not included in these assessments."

[But the Court, in all this, does not say, that the franchise assessed, was the franchise "*derived from the State of California.*"]

The learned Court did what the counsel for plaintiff expected it would do, when the counsel withdrew the motion to strike out, that is to say, it disregarded, and excluded from consideration, as incompetent, all the testimony introduced by the defendant to show the intended inclusion of the Federal franchise in the assessment in question.

The counsel for the defendant were thus deprived of the benefit of an *exception* which might have been taken to a ruling on the motion to strike out that testimony, which was withdrawn by the plaintiff.

II. Now, the interpretation of this opinion of the trial Court, most favorable to the defendant in error, is, that the Court, while not considering the testimony received by it on the issue as to whether the Federal franchise was assessed by the Board, because it held that the testimony was incompetent, decided that *if* that testimony could be considered, it preponderated in favor of the defendant in error.

If this is the meaning of the opinion (and it is the construction of it most favorable to the State of California) the proceeding can not be sustained, and the judgment

below should be reversed. Testimony must be either admitted or rejected, and, if admitted, must receive some consideration. If it were otherwise a trial would be a mere farce.

A so-called "finding of fact," based upon such treatment of the evidence, in the case, can not be deemed to have any validity or effect by an appellate tribunal.

After certain testimony offered by the plaintiff in error, had been admitted, the Court held, of its own motion, that the testimony was wholly incompetent, and such as could not be considered.

It must be presumed that the Court did not consider testimony which it deliberately held to be incompetent.

The testimony for the defendant was as effectually excluded by the Court as if it had been rejected in the first instance, or afterwards formally stricken out.

III. It is manifest from the whole record of the action of the trial Court, that it finally concluded to adopt a *rule of decision* for the disposition of the case to the effect, that there was not merely *a presumption*, but *an absolute, and irrebuttable presumption*, that the State Board did not exceed its jurisdiction by including the Federal franchise in its assessment of the property of the Company.

It was supposed that this fact was proved by the *record* of the Board, which, the Court thought, imported *absolute verity* that the Board did *not* assess the Federal franchise, and could not be contradicted by extraneous evidence, showing, however conclusively, that the Board *did* assess the value of the Federal franchise.

Of course, if there was *any* presumption that the Board did not exceed its power by assessing the value of the Federal franchise, which we deny, it was a *rebuttable* presumption, which the defendant had the right to overthrow by evidence tending to show that the Board did, in fact, assess the Federal franchise of the Company, or include the value of it in their assessment of the railroad property.

The theory of an irrebuttable presumption, *præsumptio juris et de jure*, that this State Board did not assess any Federal franchise, in 1887, is intolerable.

IV. The theory in regard to the conclusive effect of the record of the State Board, applied by the trial Court in deciding the case, and upon which it held that the evidence, on the part of the defendant, referred to, must be disregarded as "incompetent," and made its finding No. 35, being totally wrong, as matter of law, the Court below should have set aside that finding of fact, and reversed the judgment of the trial Court.

V. The defendant, of course had the undoubted right, in this direct action on and to enforce the assessment, to "contradict" the record of the assessment, in whatever terms made, by showing, if necessary, that the State Board had assessed a Federal franchise, which was not within its jurisdiction, and in respect to which its action was a simple nullity, agreeably to the settled doctrines of this Court. (Elliott *v.* Peirsoll, 1 Pet., 340; Wilcox *v.* Jackson, 13 Pet., 511, 512; Williamson *v.* Berry, 8 How., 541, 542; Thompson *v.* Whitman, 18 Wall., 457.)

SEVENTH.

But the Court below should have disregarded and set aside the Finding of Fact No. 35, and reversed the judgment based upon it, under any conceivable view of the character and meaning of the final opinion of the trial Court upon which the finding was made.

I. If the opinion was not a final and determinate ruling excluding the testimony on the part of the defendant, at the trial, and dismissing it from consideration in making the finding No. 35, it is, at least, impossible for an appellate court to judicially determine from the opinion, whether the finding was really made upon consideration of the evidence in the case, in relation to the inclusion of the Federal franchise, and the view that the evidence, upon that subject preponderated in favor of the plaintiff, or whether the finding was based upon a supposed presumption of fact that the Board did not include the Federal franchise in the assessment, and the erroneous theory that it was not competent for the defendant to rebut that presumption by any evidence in this action.

Manifestly, therefore, the finding in question should have been disregarded and set aside, and the judgment of the trial Court, which was based upon it, should have been reversed, by the Court below.

II. It is certain however, that the trial Court finally held, as stated in its opinion, that the parol evidence, introduced by the defendant, at the trial, was absolutely incompetent evidence, upon the ground, as stated, that

its effect would be and was "*to contradict the record,*" "*which,*" the trial Court said, "*can not be done.*"

It was impossible for the trial Court, entertaining such views in regard to the defendant's evidence, to give proper legal effect to that evidence for any purpose, and to properly and justly determine from the preponderance of the evidence, in the case, the question of fact as to whether or not the Federal franchise was included in the assessment for the year 1887.

The trial Court was unable to consider and determine fairly and properly any question as to the preponderance of the evidence, in the case, on the issue presented, and its judgment, as based on its finding, No. 35, should have been reversed by the Court below.

The judgment of that Court, therefore, should be reversed by this Court.

EIGHTH.

The Court below should have reversed the judgment of the Supreme Court upon the ground that the Finding of Fact, No. 35, as made, was not warranted or justified by any evidence before the Superior Court, on the trial of the cause.

I. As has been seen, the so-called finding of Fact, *No. 35*, is to the effect that the State Board of Equalization in making the assessment for 1887, "did not include in its said assessment any Federal franchise."

II. On the trial, the only evidence offered by the State in support of its causes of action, was the duplicate rec-

ords, in the Controller's Office, already referred to, and parol proof that the taxes sued for had not been paid.

It has already been submitted to the Court, that, as the records offered by the plaintiff did not show *upon their face* that the franchise assessed by the Board, was the *franchise derived from the State of California*, the records did not show that the franchise, embraced by the assessment was within the jurisdiction of the Board or one which it had power to assess, for taxation, under the Constitution of the United States, and that the records were incompetent evidence to affect the defendant in the action for taxes.

The records, which the trial Court admitted in evidence, did not *tend* to prove that the franchise assessed, was the *State franchise*, but, on the contrary, they tended to prove that the *Federal franchise was the franchise assessed, or was included in the assessment.*

The assessment imported *on its face*, an assessment of the WHOLE FRANCHISE, without regard to the authority from which it was derived. It is "*the franchise*," not "one of the franchises," or "a part of the franchise," much less "*the franchise derived from the State of California.*"

According to the assessment on the records, offered to sustain the complaint, the Federal franchise was assessed.

The plaintiff did not prove, or offer to prove, in support of its causes of action, that the franchise mentioned in the assessment, was the franchise derived from the State, and the Board had jurisdiction to make the assessment.

If it was not necessary that the assessment should show, *in terms*, that the franchise assessed, was the State franchise, then *the burden was on the plaintiff* to show affirmatively, by competent evidence, that the Board had dealt only with the State franchise, and did not touch any Federal franchise, in making its assessment.

The rule of law in respect to this State Board of Equalization is, or certainly should be, that there is *no* presumption of law in favor of its jurisdiction ; *that must affirmatively appear by the assessment*, or must, at least, be affirmatively established by competent evidence, when its assessment is sought to be made the basis of an action against a corporation invested with Federal franchises.

The Superior Court should have excluded the evidence offered by the plaintiff, or nonsuited the plaintiff when it rested its case.

III. If there was any presumption that the State Board assessed only the State franchise, the defendant was entitled to overthrow it by evidence that the Board did, in fact, include in the assessment the Federal franchise.

A large part of the evidence offered by the defendant as to this matter, however, the trial Court *refused to receive*, upon the theory that the record of the assessment was conclusive that the assessment related only to the State franchise.

After refusing to receive much of the evidence offered by the defendant, showing what, in fact, the Board did

assess, the trial Court allowed the *plaintiff* to institute an inquiry, by Messrs. Wilcoxen and Dunn, members of the State Board, as to what was intended to be included in the assessment.

The testimony of those witnesses utterly failed, however, as evidence that the State franchise was the only franchise assessed by the Board, and no jury would have been legally justified in finding any such fact from that testimony.

IV. The question upon this record, as to the finding, No. 35, is not any question as to the *weight of the evidence, in the case,* but the question is in regard to the legal effect of the evidence before the trial Court, under the issues in the case, as warranting or jusitfying what is stated in that finding.

And we respectfully submit, that the contents of the finding, No. 35, were not justified or warranted by that evidence.

NINTH.

The Courts of California violated the right of the plaintiff in error in respect to its Federal franchise, under the Constitution and laws of the United States, by prohibiting it from proving, in this action to enforce the assessment against it, that the State Board of Equalization did, in fact, include the value of that franchise in the assessment. The right to prove, in such an action, to enforce such an assessment, that its Federal franchise was assessed for State taxation by the Board, was and is a part of the right granted by the United States to the plaintiff in error, not only for its benefit, but for the benefit of the Government itself, and that right was violated when the State Courts refused to entertain the evidence offered by the plaintiff in error in this action.

I. When the State Court held that the action of the State Board in assessing "*the franchise*" of the railroad, was conclusive that the Federal franchise was *not* assessed, and that evidence to prove that the Federal franchise was, in fact, assessed, was inadmissible, because the assessment could not be contradicted, the Court violated the right of the plaintiff in error in respect to that franchise, and held under it, as effectually as if it had rendered judgment against the plaintiff in error, upon an express assessment of the Federal franchise.

If the assessment, as made, was not void, on its face, as importing an assessment of the *Federal franchise*, included in the words, "*the franchise*," that is to say, the whole franchise of the railroad, the assessment, at least,

was ambiguous or uncertain, and it was the right of the plaintiff, under its grant of the Federal franchise, to show by evidence, that the Board did erroneously or improperly include in its valuation, the franchise conferred by the United States.

As we have said, the right to make such proof, in an action by the State, to enforce such an assessment, was involved in the very grant of the franchise itself, and was a substantial part of that grant.

The right to establish, by evidence, that such an assessment was intended to include the Federal franchise, when the assessment is sought to be enforced, by an action at law, is the only means by which the plaintiff can protect itself and protect the Government, against unlawful taxation of the Federal grant, under such an assessment.

When the State Court refused to receive, or consider evidence tending to show that the Board did, in fact, include the Federal franchise, it denied to the plaintiff in error a right derived from and claimed under the Constitution and laws of the United States.

II. It will not be pretended that the State, by any legislation, could make such an assessment of "the franchise" of the railroad, conclusive evidence that no Federal franchise was included in the assessment, in an action to enforce the assessment against the Company.

A decision of the Courts of the State, in such an action, by which the assessment is given conclusive effect as evidence, that the Federal franchise was not included in it, is, likewise, a violation of the right of

the Company under the constitutional laws of the United States.

Any refusal of the State Court to allow the plaintiff in error to introduce proper evidence to show what such an assessment, in fact, included, by error of the State Board, or otherwise, and to protect itself in that manner against a violation of its constitutional right of exemption from State taxation on its Federal franchise, in a suit to enforce the assessment, presents a question for the jurisdiction of this Court, within the express terms of the 25th Section of the Judiciary Act, which is reproduced, somewhat enlarged in its provisions, in § 709 of the Revised Statutes. (Burthe *v.* Denis, 133 U. S., 514.)

TENTH.

The Court below should have reversed the judgment of the Superior Court for its error in sustaining the objection of the plaintiff to the offer of testimony, on the part of the defendant, to be given by L. C. Morehouse, a member of the State Board of Equalization, in August, 1887, as set forth in the 13th Specification of Error in the assignment of errors in this Brief.

I. The defendant proved "the allegations of the affirmative portions of the answer as to the ownership of franchises derived from the Government of the United States by the defendant, and the incorporation and consolidation of the companies constituting the defendant, and as to the mortgage and lien of the United States upon the railroad, as established by the finding of facts herein." (Rec., p. 181, fol. 358.)

The defendant then called Mr. Morehouse, who testified that he had been a member of the State Board of Equalization since January, 1883, and knew the act of assessment of the property of the defendant for the year 1887. (Rec., p. 180.)

He knew and identified the decision of the Supreme Court of the United States, at October Term, 1887, in *California* v. *Pacific Railroad Companies*, 127 U. S., 1. (*Ib.*, 183.)

After the witness had been allowed to give some testimony tending to prove that the value of the defendant's Federal franchise was included by the Board in the assessment, in 1887, the defendant made this formal offer of evidence :

" We offer to prove by this witness that at every session, during every year of the existence of the State Board of Equalization, from 1883, and prior to 1888, the Board, in making its assessment of the valuation of the property of the Central Pacific Railroad Company, included in its total estimate the value of the Federal franchise held by that Company by virtue of the Acts of Congress introduced in evidence, and that the valuation of the Federal franchise was blended into the general assessment of that Company in such manner as to be indistinguishable from it and not capable of separation." (Rec., p. 184.)

The trial Court sustained the objection of the plaintiff to the testimony thus offered as incompetent, irrelevant, and immaterial.

This ruling was assigned by the defendant as error in the Supreme Court of the State. (Rec., p. 257.)

The Supreme Court should have reversed the judgment for error of the trial Court in excluding this testimony by Mr. Morehouse.

II. The ruling of the trial Court seems to have been based upon the theory, maintained by the plaintiff, and affirmed by the Court in its final decision, that such extrinsic evidence would "contradict" the record, which, the Court said, could not be done, as the record was *conclusive* evidence that no Federal franchise had been, in fact, assessed by the Board.

Upon this erroneous theory in regard to the assessment, and the evidence offered and excluded the defendant, as the holder of Federal franchises, was not allowed to show, in this action to enforce the assessment, that the Board had erroneously or improperly invaded and infringed its right of exemption from State taxation under the Constitution and laws of the United States.

If the assessment does not import, on its face, as certainly it does, an assessment of the *whole* franchise, State and Federal, there is, at least, such ambiguity and uncertainty in its terms as required, for the protection of the defendant, the aid of extrinsic evidence tending to show what was, in fact, the extent and scope of the assessment, and what franchises were actually intended by the Board to be included in it.

Such evidence was competent in any view of the subject, and the defendant had the right to have it heard by the State Court, under the constitutional laws of the United States.

The Court and counsel for the plaintiff appear to have been ignorant of the decision of this Court, in the leading case of *Santa Clara County* v. *Southern Pacific Railroad Company* (118 U. S., 394, 415), in which the Court

adjudged that, conceding that there was a presumption that the State Board included in its valuation only such property as it had jurisdiction to assess, it was incumbent on the plaintiff, after the defendant had given proof that the Board did, in fact, include property it had no right to assess, to separate, by satisfactory evidence, that which was illegal from that which was legal, in the assessment.

Mr. Justice Harlan, delivering judgment in that case, said :

"*If* the *presumption* is, that the State Board of Equalization, included in its valuation only such property as it had *jurisdiction* under the State Constitution to assess, namely, such as could be rightfully classified under the heads of franchise, roadway, roadbed, rails, or rolling stock, that presumption was *overthrown* by proof that it did, in fact, include, under some one or more of those heads, the fences in question. Is was *then incumbent* upon the *plaintiff*, by satisfactory evidence, to separate that which was illegal from that which was legal—assuming for the purposes of this case only, that the assessment was in all other respects legal—and thus impose upon the defendant the duty of tendering, or enabling the Court to render judgment, for such amount, if any, as was justly due. But no such evidence was introduced."

This Court did not say that there was any presumption whatever, in such a suit, that the State Board acted within its jurisdiction, but held that *if* there was such a presumption, the burden was on the plaintiff, after it was overcome by evidence on the part of the defendant, to establish, by satisfactory evidence, the facts necessary to enable the Court to recognize any part of the assessment as legal and valid.

It is settled law, under the decisions of this Court, that where even the verdict of a jury, the judgment of a Court, or the award of an international commission is ambiguous, or its extent uncertain, it is competent to show, by extrinsic evidence, when necessary, in another Court, and in another suit, what was intended to be included in or embraced by it. (Washington, Alexandria, and Georgetown Steam Packet Co. *v.* Sickles, 24 How., 333; Miles *v.* Caldwell, 2 Wall., 35; Cromwell *v.* County of Sac, 94 U. S., 351, 355; Burthe *v.* Denis, 133 U. S., 514.)

The members of a jury, as the Court has held, are always competent witnesses to prove in another suit, when necessary, what was, in fact, the matter decided upon by the jury, and what question or questions were determined by them, in the previous case. (Washington, Alexandria, and Georgetown Steam Packet Co. *v.* Sickles, 24 How., 333, 344.)

This Court, in *Miles* v. *Caldwell* (2 Wall., 43), where it was again held that it is competent to prove by parol testimony what question or questions were passed upon by a jury, refers with approval to the decision of the Court of Appeals of New York, in *Doty* v. *Brown* (4 Cowen, 559), in which a justice of the peace was allowed to testify that in a former suit he had rendered his judgment for the defendant on the ground that a bill of sale was fraudulent as to creditors, and this was held conclusive in the Court of Appeals.

The defendant thus had a right to show, by parol evidence, that until this Court, in April, 1888, decided that this Federal franchise could not be assessed, the

State Board always assessed it, and no change in that system was thought of, and that within the designation of "*the franchise*" of the road, in the assessment of 1887, the Board included the value of the Federal, as well as the State, franchise.

Certainly, no testimony could be more competent, pertinent and material for that purpose, than the testimony of a member of the Board that made the assessment.

ELEVENTH.

The Court below should have reversed the judgment of the Superior Court for its error in sustaining the objection of the plaintiff to the offers of testimony, on the part of the defendant, to be given by E. W. Maslin, the Secretary of the State Board of Equalization, in August, 1887, as set forth in the 14th, 15th, 16th, and 17th specifications of error in the assignment of errors in this Brief.

I. As stated above, Mr. Maslin testified that he was the Secretary of the State Board for eleven years, including the period in question; that he was fully acquainted with the history of railroad assessments since 1880, and had had many conversations with the members of the Board concerning them; that he was present at their meetings and kept their minutes; that he remembered the assessment, in 1887, the discussion in the Board concerning it, and the evidence taken before the Board; and that he was able to state what elements of value were considered by the Board in making their estimate of the total valuation of the properties of the defendant for the year 1887.

The Court refused to allow the witness to state, from the various sources of knowledge enumerated, what elements were taken into consideration by the Board, in making this assessment, or whether he heard any conversations between the members of the Board, at the meeting when the assessment was made, with reference to the elements they proposed to, and did, include in the assessment, or what was said and done, in his presence, at the meeting of the Board, on the day and at the time the assessment in question was made.

The defendant then made the following offer of testimony by Mr. Maslin, which was overruled by the Court:

"In view of the ruling of the Court on this subject, we now offer to prove by this witness that from the time of organization of the State Board of Equalization in 1880, down to and including the year 1887, *that Board had every year considered the value of the Federal franchise—that is, the franchise derived from the United States by the acts of Congress of the Government of the United States, belonging to and owned by the Central Pacific Railroad Company, as an element of value in assessing the total value of the property of that railroad company; and that in 1888, in consequence of the decision of the Supreme Court of the United States upon the subject, the State Board of Equalization, for the first time, ceased to consider this Federal franchise as an element of value, and hence reduced their valuation by the sum of three million dollars on the Central Pacific Railroad Company's property.*"

This offer was disallowed by the Court, to which ruling the defendant excepted. (Maslin, Rec., p. 194.)

II. The plaintiff in error maintains that it had the legal right to protect its Federal franchise from unlawful assessment for taxation by the State, and the unlawful enforcement of such an assessment, in this action, by

showing, on the trial, that the assessment in question of "*the franchise*" of the Company, was designed by the Board to be and to include the assessed value, not only of the State franchise, but also of the Federal franchise, which under the constitutional laws of the country, was not subject to taxation or assessment for taxation by the State of California.

If it had no right to prove this fact, then it is at the *mercy* of the State Board, and its Federal franchise may be taxed with impunity by the State.

If the "record" of the Board has effect as an estoppel, and is a bar to any evidence offered to show the intended extent of the assessment, as made, when it is sought to be enforced, that "record" affords full and complete protection to the State against the consequences of any violation of the rights of the plaintiff in error, and of the Government itself, under the Constitution.

Neither the State, nor any Court of the State, can give such an effect to the record of the action of the Board, in a suit to enforce the assessment, under the Constitution of the United States.

Nor can the State Court adopt any rule as to the competency of evidence, which would exclude the testimony of any person, which might enable the Court to ascertain just what this Board did, and intended to do, when it signed and recorded the particular assessment in question, so far as the Federal franchise was concerned.

The State Courts can not protect the State, in an attempt to enforce an unlawful assessment of this Company's Federal franchise, by shutting out, under cover

of a rule of evidence, the light, which, if admitted, would show them, what was the intention of the Board in respect to that franchise when it made the assessment.

They can not afford the State immunity in the unlawful taxation of the Federal franchise, either by deciding that the "record" is conclusive against the owner, or by excluding the testimony of a member of the Board as to the intention of the Board, or by holding that the Secretary of the Board is incompetent to state the facts within his knowledge which would tend to show the actual truth in regard to extent of the assessment.

III. It is maintained that the plaintiff in error had the right, in protecting its National franchise from unlawful State taxation, by its defense, in this suit, to prove to the Courts of California, by the testimony of Mr. Maslin, or anybody else, *such facts as tended to show that the Board intended to include its Federal franchise in this assessment.*

The only object of any testimony was to help the Court, in this action, to find out, if there could be any doubt on the subject, whether the Board assessed the value of the Federal franchise, in assessing "the franchise" of the defendant, and it had the right to prove any facts and circumstances attending or surrounding the assessment, which had a tendency to throw any light upon the intention of the Board in respect to the Federal franchise, when it made the assessment.

IV. The Court below seems to have affirmed the ruling of the trial Court, excluding the proposed testimony

of Mr. Maslin, the Secretary of the Board, upon the ground that it related wholly to "conversations" between the members of the State Board during the session at which the assessment was made, and that the intention of the Board, or its members, or the signification to be given to the term, "the franchise," as used in the assessment, could not be shown "in that manner," and that "the evidence could not be used for *impeaching purposes*, unless the members of the Board had been previously questioned thereon." (Rec., p. 269.)

On the other hand, the minority of the Court had no doubt that the testimony of Mr. Maslin, was admissible, and material to show the intention of the Board in respect to the assessment of the Federal franchise. (Rec., p. 272.)

The view of the proposed testimony of Mr. Maslin, taken by the majority of the learned Court below, was entirely an incorrect one, both in respect to the facts intended and offered to be proved by it, and in respect to the nature and object of the testimony in relation to the action of the members of the State Board.

It will be seen, on the face of the offer, that the testimony did not relate merely to "conversations" between members of the Board, at the time of this assessment, but embraced the entire history of the acts and doings of the State Board in making its assessments of this railroad property, from 1883, to and including 1887, showing as matter of fact, that the Board *always* considered and included the value of the Federal franchise of the Company, and that, in 1888, in consequence of the decision of this Court, the State Board, *for the first time*, ceased to

consider this Federal franchise as an element of value, and hence "reduced their valuation by the sum of three million dollars on the Central Pacific Railroad Company's property.'

It is submitted that all the questions propounded to the witness, Maslin, as to what was said and done, in the matter of this assessment, at the meeting of the Board, when the assessment was made, were clearly competent and proper.

The declarations of the members of the Board, and even of other persons, while the transaction was in progress, were a part of the *res gestae*, and could be proved, by any person who knew them, in order to show what was the purpose or intention of the Board in that transaction, agreeably to the settled law in California. (Board of Education *v.* Keenan, 55 Cal., 642, 648; People *v.* Lansing, 55 Cal., 393.)

But the object of the testimony offered by the defendant was not to "impeach" the members of the Board, or the record, as seems to have been supposed by the Court below.

It was to aid in the interpretation of the assessment, and ascertain its meaning and extent in respect to the franchises of the Company, and to show that if it was doubtful on the face of the assessment, whether or not the Federal franchise was intended to be included, the actual intention of the Board was to include it, in the assessment.

The testimony did not "impeach" the members of the Board, in the sense in which the term is used in the opinion of the majority of the Court below.

V. As Mr. Justice McFarland, in the Court below well said, the words, "*the franchise*," clearly import an assessment of the *whole* franchise of the plaintiff in error, without regard to the authority from which it was derived.

If there was any presumption, in the case of this assessment, which we deny, that the Board, in fact, assessed only the *State* franchise for taxation, it was a bare presumption, a disputable presumption, which, according to the California Civil Code, was controvertible "by other evidence, direct or indirect." (Code Civ. Prac., §§ 1961, 1962, 1963, sub sec. 15, 33.)

Any presumption that the Board included in this assessment only the State franchise, would have been *repelled*, as the trial Court well knew, by the testimony proposed to be introduced by the examination of Mr. Maslin, and the plaintiff in error had the right to introduce that testimony, when the assessment was sought to be enforced against it, and against the interests of the United States, in its franchise, by the proceedings in this suit.

It is conceivable that the Board, in 1887, may have committed an error by assessing the Federal franchises.

That they did so, in prior years, is shown in the case of *California* v. *Pacific Railroad Companies*, before the Court, in 1888; and the testimony offered tended to prove that they did so in the assessment in question. It was, therefore, competent and admissible in this action.

If the law, under which the State Board of Equalization operates, in California, requires the Courts of the State to *indulge a presumption*, in this case, that the

Board did not assess the Federal franchise, in 1887, there is nothing in that law which obliges the Courts to make that presumption *absolute and conclusive* in an action to enforce the assessment; and if there were any such thing in the law of the State, it would be a plain violation of the Constitution of the United States, and *void*, as against the plaintiff in error.

VI. It is quite evident from the opinion of the Court below, that the Court intended, in affirming the ruling of the trial Court, excluding Mr. Maslin's testimony, to go about as far as it deemed it well to go, in the direction of holding, with the trial Court, that the record of the Board was conclusive against the plaintiff in error, and could not be "contradicted" by any extrinsic evidence to show what was, in fact, included in the assessment.

It will be for this Court to say, whether the State Courts have a right, directly or indirectly, by any so-called rule as to the competency or admissibility of evidence, to make the assessment, which, to say the least, is ambiguous and uncertain, on its face, *conclusive* in this action to enforce the assessment that no Federal franchise was assessed, contrary to the actual *fact* that the Board *did* assess, knowingly and intentionally, the franchise granted to the plaintiff in error by the United States.

TWELFTH.

The Court below erred in deciding that the trial Court committed no error in the ruling made by it upon the cross examination of the plaintiff's witness, C. E. Wilcoxen, which excluded evidence as to what was done by the State Board of Equalization in any other year, as inadmissible in this case.

I. Mr. Wilcoxen was the member of the State Board, relied on by the plaintiff in this suit to testify that the Federal franchise was not assessed by the Board in 1887.

It appears that Mr. Wilcoxen had testified, in February, 1889, before the Judiciary Committee of the Assembly of California, in relation to the assesments of the franchises of these railroads by the State Board.

Counsel for the defendant asked him, on cross-examination, whether, on that occasion, he had testified in a certain manner.

The trial Court sustained the objection of the plaintiff *to that question.* (Rec., pp. 213, 214.)

During the discussion, and before he knew what he was to be interrogated about, the witness interjected that his testimony on the former occasion was correct; but he did not admit or testify that he *had given* the particular testimony as to which he was interrogated.

II. The trial Court ruled upon this cross-examination, that evidence as to what the Board did in another year, was inadmissible; and this was error. That such evidence was admissible is beyond question, for it directly

explained the action of the Board, in the present case, in 1887.

The defendant was defeated, by the rulings of the trial Court, at every turn, in its effort to establish its defence that this assessment included its Federal franchises.

THIRTEENTH.

The Court below erred in affirming the judgment of the Superior Court, and in not reversing the judgment, upon the ground that the Superior Court erred in admitting in evidence "Plaintiff's Exhibit 4" and "Plaintiff's Exhibit 6," being the Statements furnished by the defendant to the State Board of Equalization for the years 1888 and 1887 respectively.

I. By section 3664 of the Political Code of California, it is provided that "the President, Secretary, Managing Agent, or such other officer as the State Board of Equalization may designate, of any corporation, and each person, or association of persons, owning or operating any railroad in more than one county in this State, shall, on or before the first Monday in April of each year, furnish the said Board a statement, signed and sworn to by one of such officers, or by the person or one of the persons forming such association, showing in detail for the year ending on the first Monday in March in each year," certain *facts* in regard to the railroad, which are specified, and "any other *facts* the State Board of Equalization may require."

The section provides that if such statement is not furnished, the assessment made by the State Board on

the property of the corporation, person, or association, failing to furnish the statement, is conclusive and final.

By section 3692 of the Political Code, power is given to the State Board, "to make out, prepare, and enforce the use of forms in relation to the assessment of property," and also to examine witnesses.

Under this power, the Board prepared printed blanks in the form of questions to be answered by the defendant, which, of course, had nothing whatever to do with the language used in the blanks.

The form of statement for the year 1887, contained a blank to be filled, as follows:

"The value of the franchise and entire roadway, roadbed and rails within this State is $————."

This blank was filled by the defendant with the figures, "12,273,785.00."

The form of statement for the year 1888 contained a blank to be filled, as follows:

"The value of the franchise derived from the State within this State, $————."

This blank was filled by the defendant with the figures, "25.00."

The record shows that the plaintiff, on the cross-examination of Mr. Coghlan, the Clerk of the State Board of Equalization, called by the defendant, offered in evidence the statements which were furnished by the defendant to the State Board for the years 1888, and 1887, on the printed blanks of the Board, and they were admitted in evidence by the trial Court.

The papers are in the record as "*Plaintiff's Exhibit 4*," and "*Plaintiff's Exhibit 6*." (Rec., p. 165; p. 173.)

The defendant objected to the introduction of the papers, as incompetent, irrelevant and immaterial, for the purposes mentioned by the counsel of the State, but the objections were overruled; and the defendant excepted to the rulings. (Rec., p. 165; p. 180.)

These statements for 1888 and 1887 were offered by the plaintiff generally for all purposes for which they might be pertinent, and specially for the following purposes; that of 1887 to show that it included a valuation of the entire franchise of defendant's road; and that of 1888 to show that the change in the assessment of that year, was made in pursuance of that statement.

II. The proceeding, under § 3664 of the Political Code, is an inquisition made by the State Board, under authority of law, by which certain "*facts*" are sought to be ascertained by it.

The statement contemplated by the section is not a list of property furnished to an assessor for purposes of assessment, such as is referred to in the cases cited to the Court below by the defendant in error.

The inquisitorial proceeding is not confined to taxable property.

Under § 3664, the defendant was required to state, among other things, the number of miles of its railroad *without the State*, the number of each kind of all rolling stock used by it *without the State*, the gross earnings of the entire road, including that portion *without the State*, and, lastly, "*any other facts that the State Board of Equalization may require.*"

The defendant was bound by law to answer categorically the questions propounded by the State Board, and

to answer them in the very terms in which they were propounded, without ability to change a word in any of the questions.

There was nothing in the statement for 1887 that admitted that any of the property therein mentioned was taxable at all; nor did the defendant give, or it was bound to express, any opinion as to what was taxable property or what was not taxable. The whole proceeding was *in invitum*.

If the State Board, after receiving the statement, had assessed the defendant's railroad, situated in Nevada and Utah, or rolling stock used by it there, and never brought within the State, it would not be contended, we apprehend, that the defendant, by answering these questions, was estopped from disputing the validity of that assessment. If an estoppel could be created in that manner, it would be in the power of the State Board, by simply preparing these blank forms, in a certain way, to assess anything it pleased, and the tax payer would be without redress.

The California cases cited by the defendant in error below, were supposed to support the proposition that a party can not complain of an assessment which follows the description furnished by him to the assessor; but no such proposition is decided by those cases. Three of them hold that, when an assessment follows the description furnished by the party, he can not be heard to say *that that description is insufficient.* The other case holds that where a party returns to the assessor a statement of property as owned by himself, he can not afterwards claim, against the assessment, that the property

was owned by another. The cases are not authority on any point involved in this case.

As has been observed, the statement of facts, under § 3664, is not a list of property furnished to an assessor for the purposes of assessment. And none of the California decisions referred to present the case of an assessment of property exempt under the laws of the United States, nor, indeed, of an assessment of property for any reason not liable to taxation.

III. It is manifest that the answer of the defendant to the question of the State Board in 1887, as to the gross value of its franchise, roadway, roadbed, and rails, taken together, and its answer to the question of that Board, in 1888, as to the value of its franchise *derived from the State*, had nothing whatever to do with the issues, under the pleadings in respect to the franchise of the defendant derived from the National Government, and the illegal inclusion of the same by the State Board in the assessment in question in this case.

The answers, in the printed blanks prepared by the Board, did not tend to show, in the remotest manner, that the State Board did not intend to include, or did not, in fact, include the value of the Federal franchise of the railroad, in its assessment, as made in 1887.

It is equally certain that upon no judicial theory of estoppel, based on the statement of the plaintiff in error, in 1887, can it be deprived by the State Courts of California, of its right, under the constitutional laws of the United States, to prove, and maintain, in this action, that the assessment sought to be enforced

against it, did include the value of the franchise of the railroad of the plaintiff in error derived from the Government of the United States, in violation of the laws of that Government, and against its constitutional rights and interests.

If the plaintiff in error had expressly consented to the inclusion of the Federal franchise of its railroad for taxation by the State, in the assessment made by the State Board, in 1887, it could not be estopped or precluded in any manner from denying the validity of that assessment, in this action, to enforce it, and the right of the State to recover the taxes based upon the assessment.

The franchise of this railroad was conferred by the United States, not for the sake of the corporation, but for the sake of the Government, and the public and national objects contemplated by the grant. (Osborn *v.* Bank, 9 Wheaton, 360.)

The exemption of the franchise of this railroad from taxation by the State, is a right of the United States, as well as of the plaintiff in error, and not a mere privilege of the latter.

As declared by this Court in *California* v. *Pacific Railroad Companies* (127 U. S., 1), State taxation of the franchise of the plaintiff in error, is State taxation of "the power" given by the United States, and "is not only derogatory to the dignity, but subversive of the powers of the Government, and repugnant to its paramount sovereignty."

It would be impossible to maintain, therefore, that even an express consent, to the assessment of the Fed-

eral franchise of its railroad for taxation by the State, in 1887, if such consent had ever been given by the plaintiff in error, would impair its constitutional right to maintain that such an assessment of that franchise, could not be enforced against it in this action by the State of California.

These great principles of constitutional law in respect to the Federal franchise, of the plaintiff in error, upon which the taxes sought to be recovered by the State of California, were levied, were not understood by the learned Court below or were entirely ignored by it in affirming the judgment of the trial Court, and distinctly so, when it approved the ruling of that Court admitting in evidence the statement furnished to the State Board of Equalization, in 1887, under the provisions of the Political Code which have been mentioned, upon the ground apparently that the plaintiff in error was barred and precluded by that statement from resisting or opposing the attempt and effort of the State to collect by a judgment in this action, the taxes so levied by the State upon the Federal franchise of its railroad.

It was totally immaterial, in this case, and irrelevant to the issues in it, what statement was made to the State Board in response to the question as to the value of the franchise of the railroad of the plaintiff in error, in 1887, or what franchise was or was not included, or was, or was not intended to be included, by the plaintiff in error, in that statement.

The State Board could not acquire jurisdiction or power to assess for taxation by the State, in 1887, any Federal franchise held by the plaintiff in error, by any

statement made by it in respect to the value of its franchise, in response to the inquiry of the State Board, nor could the plaintiff in error be estopped by any such statement from questioning, in this action, the validity of the assessment as made by the State Board, in that year, upon the ground that the assessment included the Federal franchise of the railroad, in violation of the constitutional laws of the United States.

It is difficult to understand that the majority of the learned Court below was able to perceive any force in the suggestion, in their opinion, that "if the property so mentioned in the statement of 1887 could be assessed, or if, as in the present case, the appellant held two franchises, one of which could be assessed, and the other could not, it must be held that the franchise which it included in its statement was the one capable of assessment, and that the appellant ought not to be permitted to say that the other was intended by it, or was included in the assessment."

It has already been said that the language of the statement was that of the Board, and not that of the plaintiff in error.

If the Board proposed to assess the so-called State franchise, in 1887, it should have asked, as it asked, in 1888, the value of the franchise "*derived from the State of California.*"

Instead of doing so, it asked "the value of *the franchise*, and entire roadway, roadbed, and rails within this State," and it got an answer from the plaintiff in error.

If the Board assessed, as it did, the Federal franchise,

in 1887, the answer of the Company to the question propounded to it by the Board, of course, did not and could not validate the assessment.

The very form of the statement prepared by the Board, in 1887, shows that it intended to assess, and did assess, to the Company the value of the entire franchise of the railroad.

When the Board proposed to assess, and did assess, the State franchise, in 1888, the statement required by it, called for "*the value of the franchise derived from the State of California.*"

The Board received an answer that that franchise was worth twenty-five dollars.

If there is any estoppel, in the case, it is an estoppel upon the *State Board* to deny that it intended to assess, and did assess to the plaintiff in error, in 1887, the value of the *entire franchise* of its railroad for taxation by the State of California.

The State ought not to be heard to say, in this case, that the franchise derived from the United States, was not assessed by the State Board of Equalization, in 1887.

IV. It follows from what has been submitted to the learned Court, that the statements referred to had no bearing whatever upon the issues in this case, and no relevancy whatever to any question in it, and that their admission in evidence resulted from the erroneous views entertained by the trial Court, and affirmed by the Court below, in regard to the rights of the plaintiff in error in respect to its Federal franchise, and the protection of that franchise from unlawful taxation by the State of California.

It was totally immaterial, in this case, whether or not the assessment in question was made in accordance with the statement furnished by the plaintiff in error to the State Board, in 1887, in respect to the value of the franchise and railroad property of the Company in the State of California. If it was, the fact could not give validity to the assessment, or entitle the State to recover from the plaintiff in error the moneys claimed in this suit.

It was equally immaterial whether or not the change in the assessment of 1888 was made in pursuance of the statement by the plaintiff in error in that year.

It was error, therefore, for the trial Court to admit the statements in evidence for the purposes for which they were offered by the State, and it should have been so decided by the Court below.

FOURTEENTH.

The judgment of the Supreme Court of California, affirming, as modified, the judgment of the Superior Court for the City and County of San Francisco, in this action, should be reversed, with costs.

J. HUBLEY ASHTON,
CHARLES H. TWEED,
Counsel for the Plaintiff in Error.

Office Supreme Court U. S.
FILED.
JAN 15 1896
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1895.

Nos. 559 and 560.

THE CENTRAL PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR, *vs.* THE PEOPLE OF THE STATE OF CALIFORNIA.

THE SOUTHERN PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR, *vs.* THE PEOPLE OF THE STATE OF CALIFORNIA.

Supplement to the Briefs for the Plaintiffs in Error.

I.

Provisions of the Constitution of California Relative to the Assessment of Property.

SECTION 1 OF ARTICLE XIII. All property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word "property," as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership: *Provided*, That growing crops, property

used exclusively for public schools, and such as may belong to the United States, this State, or to any county or municipal corporation within this State, shall be exempt from taxation. The Legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to *bona fide* residents of this State.

SECTION 4 OF ARTICLE XIII. A mortgage, debt of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment a full discharge thereof: *Provided*, That if any such security or indebtedness shall be paid by any such debtor or debtors, after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year.

SECTION 10 OF ARTICLE XIII. All property, except as hereinafter in this section provided, shall be assessed in the county, city, city and county, town, township, or district in which it is situated, in the manner prescribed by

law. The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this State shall be assessed by the State Board of Equalization, at their actual value, and the same shall be apportioned to the counties, cities and counties, cities, towns, townships, and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities and counties, cities, towns, townships and districts.

II.

Provisions of the Political Code of California relative to the Assessment and the Levying of Taxes and the Collection of the Same upon Railroads operated in more than one County.

SECTION 3664. The President, Secretary, or Managing Agent, or such other officer as the State Board of Equalization may designate, of any corporation, and each person, or association of persons, owning or operating any railroad in more than one county in this State, shall, on or before the first Monday in April of each year, furnish the said Board a Statement, signed and sworn to by one of such officers, or by the person or one of the persons forming such association, showing in detail for the year ending on the first Monday in March in each year—

1. The whole number of miles of railway in the State, and where the line is partly out of the State, the whole number of miles without the State and the whole number within the State, owned or operated by such corporation, person, or association.

2. The value of the roadway, roadbed, and rails of the whole railway, and the value of the same within the State.

3. The width of the right of way.

4. The number of each kind of all rolling stock used by such corporation, person, or association in operating the entire railway, including the part without the State.

5. Number, kind, and value of rolling stock owned and operated in the State.

6. Number, kind, and value of rolling stock used in the State, but owned by the party making the returns.

7. Number, kind, and value of rolling stock owned, but used out of the State, either upon divisions of road operated by the party making the returns, or by and upon other railways.

Also showing in detail for the year preceding the first of January—

1. The gross earnings of the entire road.

2. The gross earnings of the road in the State, and where the railway is let to other operators, how much was derived by the lessor as rental.

3. The cost of operating the entire (road), exclusive of sinking fund, expenses of land department, and money paid to the United States.

4. Net income for such year, and amount of dividend declared.

5. Capital stock authorized.

6. Capital stock paid in.

7. Funded debt.

8. Number of shares authorized.

9. Number of shares of stock issued.

10. Any other facts the State Board of Equalization may require.

11. A description of the road, giving the point of entrance into and the point of exit from each county, with a statement of the number of miles in each county. When a description of the road shall once have been given no other annual description thereafter is necessary, unless the road shall have been changed. Whenever the road, or any portion of the road, is advertised to be

sold, or is sold for taxes, either State or county, no other description is necessary than that given by, and the same is conclusive upon, the corporation, person, or association giving the description. No assessment is invalid on account of a misdescription of the railway or the right of way for the same.

If such statement is not furnished as above provided, the assessment made by the State Board of Equalization upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

SECTION 3665. The State Board of Equalization must meet at the State Capitol on the first Monday in August, and continue in open session from day to day, Sundays excepted, until the third Monday in August. At such meeting the Board must assess the franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county. Assessment must be made to the corporation, person, or association of persons owning the same, and must be made upon the entire railway within the State, and must include the right of way, bridges, culverts, wharves and moles upon which the track is laid, and all steamers which are engaged in transporting passengers, freights, and passenger and freight cars across waters which divide the road. The depots, stations, shops and buildings erected upon the space covered by the right of way, are assessed by the assessor of the county wherein they are situate. Within ten days after the third Monday of August, the Board must apportion the total assessment of the franchise, roadway, roadbed, rails, and rolling stock of each railway to the counties, or cities and counties, in which such railway is located, in proportion to the number of miles of railway laid in such counties, and cities and counties. The Board must also, within said time, transmit by mail to the County Auditor of each county, or city and county, to which such appor-

tionment shall have been made, a statement showing the length of the main track of such railway within the county, or city and county, with a description of the whole of the said track within the county, or city and county, including the right of way by metes and bounds or other description sufficient for identification, the assessed value per mile of the same as fixed by a pro rata distribution per mile of the assessed value of the whole franchise, roadway, roadbed, rails, and rolling stock of said railway within the State, and the amount apportioned to the county, or city and county. The Auditor must enter the statement on the assessment roll or book of the county, or city and county, and where the county is divided into assessorial townships or districts, then on the roll or book of any township or district he may select, and enter the amount of the assessment apportioned to the county, or city and county, in the column of the assessment book or roll as aforesaid, which shows the total value of all property for taxation either of the county, city and county, or such township or district. On the first Monday in October the Board of Supervisors must make, and cause to be entered in the proper record book, an order stating and declaring the length of main track of the railway assessed by the State Board of Equalization within the county; the assessed value per mile of said railway, the number of miles of track, and the assessed value of such railway lying in each city, town, township, school and road district, or lesser taxing district in the county, or city and county, through which said railway runs, as fixed by the State Board of Equalization, which shall constitute the assessment value of said property for taxable purposes in such city, town, township, school, road, or other district; and the Clerk of the Board of Supervisors must transmit a copy of each order or equalization to the City Council or Trustees, or other legislative body of incorporated cities or towns, the

Trustees of each school district, and the authorized authorities of other taxation districts through which such railway runs. All such railway property shall be taxable upon said assessment, at the same rates, by the same officers, and for the same purposes as the property of individuals within such city, town, township, school, road, and lesser taxation districts respectively. If the owner of a railway assessed by the State Board of Equalization is dissatisfied with the assessment made by the Board, such owner may, at the meeting of the Board, under the provision of section three thousand six hundred and ninety-two of the Political Code, between the third Monday in August and the third Monday in September, apply to the Board to have the same corrected in any particular, and the Board may correct and increase or lower the assessment made by it, so as to equalize the same with the assessment of other property in the State. If the Board shall increase or lower any assessment previously made by it, it must make a statement to the County Auditor of the county affected by the change in the assessment, of the change made, and the Auditor must note such change upon the assessment book or roll of the county as directed by the Board. [In effect March 9, 1883.]

SECTION 3666. The State Board of Equalization must prepare each year a book, to be called "Record of Assessment of Railways," in which must be entered each assessment made by the Board, either in writing, or by both writing and printing. Each assessment so entered must be signed by the Chairman and Clerk. The record of the apportionment of the assessments made by the Board to the counties, and cities and counties, must be made in a separate book, to be called "Record of Apportionment of Railway Assessments." In such last described book must be entered the names of the railways assessed by the Board, the names of the corporation to which, or the

name of the person or association to whom, each railway was assessed, the whole number of miles of the railway in the State, the number of miles thereof in each county, or city and county, the total assessment of the franchise, roadway, roadbed, rails, and rolling stock for purposes of State taxation, and the amount of the apportionment of such total assessment to each county, and city and county, for county, and city and county taxation. Before the third Monday of October of each year the Clerk of the State Board of Equalization must prepare and transmit to the Controller of the State, duplicates of the "Record of Assessment of Railways," and "Record of Apportionment of Railway Assessments," each certified by the Chairman and Clerk of the Board, and to be known respectively as "Duplicate Record of Assessment of Railways," and "Duplicate Record of Apportionment of Railway Assessments." In the last named duplicate two columns must be added, in one of which the Controller must enter the State taxes due the State upon the whole assessment by each corpor ation, person or association, and in the other the county, or city and county taxes, due upon the assessment apportioned to each county, or city and county, by each corporation, person or association. The two duplicates constitute the warrant for the Controller to collect the State and county, and city and county, taxes levied upon such property assessed by the Board, and the amount of the apportionment of the assessment to each county, and city and county, respectively. [In effect March 9, 1883.]

SECTION 3667. When the Board of Supervisors of each county, and city and county, to which the State Board of Equalization has apportioned the assessment of railways shall have fixed the rate of county, or city and county, taxation, the Clerk of the Board of Supervisors must forthwith by mail, postage paid, transmit to the Controller a statement of the rate of taxation levied by the Board of Super-

visors for county, or city, and county taxation. If the Clerk fails to transmit such a statement, the Controller must obtain the information as to such rate of taxation from other sources. On or before the fourth Monday of October the Controller must compute and enter in separate money columns in the "Duplicate Record of Apportionment of Railway Assessments" the respective sums, in dollars and cents, rejecting fractions of a cent, to be paid by the corporation, person, or association liable therefor as the State tax upon the total amount of the assessment, and the county, or city and county, tax upon the apportionment of the assessment to each county, and city and county, of the property assessed to such corporation, person, or association named in said duplicate record. [In effect March 9, 1883.]

SECTION 3668. Within ten days after the fourth Monday in October, the Controller must publish a notice for two weeks in one daily newspaper of general circulation at the State Capitol, and in two daily newspapers of general circulation published in the city of San Francisco, specifying:

1. That he has received from the State Board of Equalization the "Duplicate Record of Assessments of Railways" and the "Duplicate Record of Apportionment of Railway Assessments;"

2. That the taxes are now payable and will be delinquent on the last Monday in December next, at six o'clock p. m., and that unless paid to the State Treasurer at the Capitol prior thereto, five per cent will be added to the amount thereof. On the last Monday in December of each year, at six o'clock p. m., all of unpaid taxes are delinquent, and thereafter there must be collected by the State Treasurer or other proper officer an addition of five per centum, which sum when collected must be set aside by the Treasurer, as a fund with which to pay the contin-

gent expenses of actions against any delinquents, the said expenses to be audited by the Board of Examiners. When any taxes are paid to the State Treasurer by order of the Controller, upon assessments made and apportioned by the State Board of Equalization, the Controller must forthwith notify the Auditor and Treasurer respectively of each county, and city and county, that such taxes have been paid, and of the amount thereof to which each county and city and county interested is entitled. The State's portion of the taxes must be distributed by the Treasurer to each fund entitled thereto, and the portion belonging to the counties, and cities and counties, must be placed in a fund, to be called "Railway Tax Fund," to the credit of each county, and city and county entitled thereto. When any taxes are placed in the "Railway Tax Fund" to the credit of a county, or city and county, the Controller, at the next settlement with the Controller by the Treasurer of such county, or city and county, must draw and deliver to such Treasurer, his warrant upon the State Treasurer for the amount in the fund to the credit of such county, or city and county. [In effect March 9, 1883.]

SECTION 3669. Each corporation, person, or association assessed by the State Board of Equalization must pay to the State Treasurer, upon the order of the Controller, as other moneys are required to be paid into the Treasury, the State and county, and city and county, taxes each year levied upon the property so assessed to it or him by said Board. Any corporation, person or association dissatisfied with the assessment made by the Board, upon the payment of the taxes due upon the assessment complained of, and the five per cent added, if to be added, on or before the first Monday in February, and the filing of notice with the Controller of an intention to begin an action, may, not later than the first Monday of February, bring an action against the State Treasurer for the

recovery of the amount of taxes and percentage so paid to the Treasurer, or any part thereof, and in the complaint may allege any fact tending to show the illegality of the tax, or of the assessment upon which the taxes are levied in whole or in part. A copy of the complaint and of the summons must be served upon the Treasurer within ten days after the complaint has been filed, and the Treasurer has thirty days within which to demur or answer. At the time the Treasurer demurs or answers, he may demand that the action be tried in the Superior Court of the County of Sacramento. The Attorney-General must defend the action. The provisions of the Code of Civil Procedure relating to pleadings, proofs, trials and appeals are applicable to the proceedings herein provided for. If the final judgment be against the Treasurer, upon presentation of a certified copy of such judgment to the Controller, he shall draw his warrant upon the State Treasurer, who must pay to the plaintiff the amount of the taxes so declared to have been illegally collected, and the cost of such action, audited by the Board of Examiners, must be paid out of any money in the General Fund of the Treasury, which is hereby appropriated; and the Controller may demand and receive from the county, or city and county, interested, the proportion of such costs, or may deduct such proportion from any money then, or to become due to said county, or city and county. Such action must be begun on or before the first Monday in February of the year succeeding the year in which the taxes were levied, and a failure to begin such action is deemed a waiver of the rights of action. [In effect March 9, 1883.]

SECTION 3670. After the first Monday of February of each year, the Controller must begin an action in the proper court, in the name of the people of the State of California, to collect the delinquent taxes upon the property assessed by the State Board of Equalization; such

suit must be for the taxes due the State, and all the counties, and cities and counties, upon property assessed by the Board of Equalization, and appearing delinquent upon the "Duplicate Record of Apportionment of Railway Assessments."

The demands for state and county, and city and county taxes, may be united in one action. In such action a complaint in the following form is sufficient:

[Title of Court.]

THE PEOPLE OF THE STATE OF CALIFORNIA

vs.

(NAMING THE DEFENDANT.)

Plaintiff avers that on the day of , in the year (naming the year) the State Board of Equalization assessed the franchise, roadway, roadbed, rails, and rolling stock of the defendant at the sum of (naming it) dollars. That the Board apportioned the said assessment as follows: To the county of (naming it) the sum of (naming it) dollars (and so on naming each county).

That the defendant is indebted to plaintiff for State and county taxes for the year eighteen , in the following sums: For State taxes, in the sum of (naming it) dollars; for county taxes of the county of (naming it), in the sum of (naming it) dollars, etc., with five per cent added for non-payment of taxes. Plaintiff demands payment for said several sums and prays that an attachment may issue in form as prescribed in section 540 of the Code of Civil Procedure.

(Signed by the Controller or his attorney.)

On the filing of such complaint, the clerk must issue the writ of attachment prayed for, and such proceedings shall be had as under writs of attachment issued in civil actions; no bond nor affidavit previous to the issuing of the attachment is required. If in such action the plain-

tiff recover judgment, there shall be included in the judgment as counsel fees, and in case of judgment of taxes after suit brought but before judgment, the defendant must pay as counsel fees, such sums as the Court may determine to be reasonable and just. Payment of the taxes or the amount of the judgment in the case must be made to the State Treasurer. In such actions the duplicate record of assessments of railways and the duplicate record of apportionment of railway assessments, or a copy of them, certified by the Controller, showing unpaid taxes against any corporation, person, or association for property assessed by the State Board of Equalization, is *prima facie* evidence of the assessment, the property assessed, the delinquency, the amount of the taxes due and unpaid to the State and counties, or cities and counties therein named, and that the corporation, person, or association is indebted to the people of the State of California in the amount of taxes, State and county, and city and county, therein appearing unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with. [In effect March 9, 1883.]

SEC. 3671. The assessment made by the County Assessor, and that of the State Board of Equalization, as apportioned by the Boards of Supervisors to each city, town, township, school, road, or other district in their respective counties, or cities and counties, shall be the only basis of taxation for the county, or any subdivision thereof, except incorporated cities and towns, and may also be taken as such basis in incorporated cities and towns when the proper authorities may so elect. All taxes upon townships, road, school, or other local districts shall be collected in the same manner as county taxes. [In effect March 9, 1883.]